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Contents

Federal Register

Vol. 84, No. 32

Friday, February 15, 2019

Agricultural Marketing Service

RULES

Establish Procedures to Meet Via Electronic Communications:

Olives Grown in California, 4307–4309

PROPOSED RULES

Marketing Order:

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2019–2020 Marketing Year, 4381–4387

National Organic Program:

National List of Allowed and Prohibited Substances for April 2018 NOSB Recommendations (Crops and Handling), 4377–4381

Agriculture Department

See Agricultural Marketing Service

See Forest Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4432

Air Force Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4451

Antitrust Division

NOTICES

Changes under National Cooperative Research and Production Act:

ASTM International Standards, 4537

Countering Weapons of Mass Destruction, 4537–4538

Information Warfare Research Project Consortium, 4536–4537

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4467–4470

Meetings:

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 4466–4467

Centers for Medicare & Medicaid Services

NOTICES

Public Hearings:

Compliance of Texas Calculation of Post-Eligibility Treatment of Income with the Social Security Act, 4471–4473

Statement of Organization, Functions, and Delegations of Authority, 4470

Civil Rights Commission

NOTICES

Meetings:

Georgia Advisory Committee, 4433

Minnesota Advisory Committee, 4433–4434

Nevada State Advisory Committee, 4432–4433

Coast Guard

RULES

Safety Zones:

Fireworks Displays; Upper Potomac River, Washington Channel, DC, 4333–4336

PROPOSED RULES

Special Local Regulation:

Chesapeake Bay, between Sandy Point and Kent Island, MD, 4390–4393

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4504–4505

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

OMB Control Number: 1625–0006, 4506–4507

Environmental Impact Statements; Availability, etc.:

Polar Security Cutter Program, 4508–4509

Meetings:

Chemical Transportation Advisory Committee, 4507–4508
Towing Safety Advisory Committee, 4505–4506

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 4446–4449

Commodity Futures Trading Commission

NOTICES

Meetings:

Technology Advisory Committee, 4449

Requests for Nominations:

Agricultural Advisory Committee, 4449–4450

Defense Acquisition Regulations System

RULES

Defense Federal Acquisition Regulation Supplement:

Amendments Related to General Solicitations, 4364–4366
Antiterrorism Training Requirements for Contractors, 4362–4364

Appendix A, Armed Services Board of Contract Appeals, Part 1—Charter, 4360–4362

Exemption from Design-Build Selection Procedures, 4371–4373

Extension of Supply Chain Risk Management Authority, 4368–4370

Modification of DFARS Clause “Transportation of Supplies by Sea”, 4370–4371

Use of Commercial or Non-Government Standards, 4366–4368

PROPOSED RULES

Defense Federal Acquisition Regulation Supplement:

Undefinitized Contract Actions, 4429–4431

Defense Department

See Air Force Department

See Defense Acquisition Regulations System

See Navy Department

RULES

Establishment of TRICARE Select and Other TRICARE Reforms, 4326–4333

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4451–4452, 4455–4456

Meetings:

Defense Innovation Board, 4453–4455
 Defense Science Board, 4452–4453
 Reserve Forces Policy Board, 4456–4457

Education Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Case Service Report, 4459
 Progress in International Reading Literacy Study Field Test Recruitment; Correction, 4458
 Arbitration Panel Decisions under the Randolph-Sheppard Act, 4458–4459

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency**RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:
 Connecticut; Prevention of Significant Deterioration; Revisions to the Prevention of Significant Deterioration Greenhouse Gas Permitting Authority, 4338–4339
 Pesticide Tolerances:
 Trifloxystrobin, 4340–4345
 Trifluralin, 4345–4351

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:
 Air Plan Disapproval; Wisconsin; Redesignation Request for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard, 4426–4429
 Florida; 2008 8-hour Ozone Interstate Transport, 4403–4407
 Florida; Redesignation of the Nassau County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment, 4411–4422
 Kentucky; Regional Haze Plan and Prong 4 (Visibility) for the 1997 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, 4407–4411
 Revision of Nonattainment Designation for the 1997 and 2008 Ozone Standards and Clean Data Determination for the 2008 Ozone Standards:
 Sheboygan County, WI, 4422–4426

NOTICES

Environmental Impact Statements; Availability, etc.:
 Weekly Receipts, 4463–4464

Federal Aviation Administration**RULES**

Airworthiness Directives:
 Airbus SAS Airplanes, 4310–4313
 Pratt and Whitney Division (PW) Turbofan Engines, 4320–4323
 The Boeing Company Airplanes, 4313–4315, 4318–4320
 Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited) Airplanes, 4315–4318

PROPOSED RULES

Airworthiness Directives:
 Airbus SAS Airplanes, 4387–4390

NOTICES

Land Use:
 Mobile Downtown Airport, Mobile, AL, 4602

Federal Communications Commission**RULES**

Jurisdictional Separations and Referral to the Federal-State Joint Board, 4351–4360

NOTICES

Charter Renewals:
 Broadband Deployment Advisory Committee, 4464
 Radio Broadcasting Services:
 AM or FM Proposals To Change The Community of License, 4464–4465

Federal Election Commission**NOTICES**

Filing Dates for the Pennsylvania Special Election in the 12th Congressional District, 4465–4466
 Meetings; Sunshine Act, 4465

Federal Emergency Management Agency**NOTICES**

Flood Hazard Determinations, 4513–4516
 Major Disaster and Related Determinations:
 Alaska, 4515

Federal Energy Regulatory Commission**NOTICES**

Combined Filings, 4459–4463
 Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
 Crystal Lake Wind Energy I, LLC, 4462
 Pinetree Power LLC, 4460–4461
 Revere Power, LLC, 4463
 Spruance Operating Services, LLC, 4460

Federal Maritime Commission**NOTICES**

Agreement Filed, 4466

Federal Motor Carrier Safety Administration**NOTICES**

Parts and Accessories Necessary for Safe Operation; Exemption Applications:
 Automobile Carriers Conference of the American Trucking Associations, 4602–4605

Federal Reserve System**RULES**

Large Financial Institution Rating System; Regulations K and LL; Correction, 4309–4310

NOTICES

Change in Bank Control:
 Acquisitions of Shares of a Bank or Bank Holding Company, 4466

Fish and Wildlife Service**NOTICES**

Draft Safe Harbor Agreement Amendment and Application for an Enhancement of Survival Permit, Tres Rios Project, Phoenix, AZ, 4523–4525

Food and Drug Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Exports: Notification and Recordkeeping Requirements, 4473–4475
 Reporting Associated with New Animal Drug Applications and Veterinary Master Files, 4479–4482
 Established Conditions; Pilot Program, 4478–4479
 Framework for a Real-World Evidence Program, 4475
 Meetings:
 Blood Products Advisory Committee, 4476–4477
 General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee, 4476

Foreign Assets Control Office**NOTICES**

Blocking or Unblocking of Persons and Properties, 4609

Forest Service**NOTICES**

Environmental Impact Statements; Availability, etc.:
 Bog Creek Road Project; Draft Records of Decision, 4509–4513

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

NOTICES

Request for Information:
 Retail Pharmacy Interest in Utilization of Innovative Educational Technology to Increase Human Papillomavirus (HPV) Vaccination Rates in Rural Areas, 4482–4483

Health Resources and Services Administration**NOTICES**

Charter Renewals:
 Advisory Council on Blood Stem Cell Transplantation, 4482

Homeland Security Department

See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Technical Assistance Request and Evaluation, 4516–4517
 Telecommunications Service Priority System, 4517–4518

Information Security Oversight Office**NOTICES**

Meetings:
 National Industrial Security Program Policy Advisory Committee, 4541–4542

Interior Department

See Fish and Wildlife Service
See Ocean Energy Management Bureau

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
 Truck and Bus Tires from the People's Republic of China, 4434–4441

International Trade Commission**NOTICES**

American Manufacturing Competitiveness Act:
 Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy, 4533
 Investigations; Determinations, Modifications, and Rulings, etc.:
 Certain Pickup Truck Folding Bed Cover Systems and Components Thereof, 4534–4535
 Rubber Bands from China, 4534
 Scheduling of Expedited Five-Year Reviews:
 Pasta from Italy and Turkey, 4535–4536
 U.S.-EU Trade Agreement:
 Advice on the Probable Economic Effect of Providing Duty-free Treatment for Currently Dutiable Imports, 4536
 U.S.-UK Trade Agreement:
 Advice on the Probable Economic Effect of Providing Duty-free Treatment for Currently Dutiable Imports, 4533

Justice Department

See Antitrust Division

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 2019 Census of Jails, 4539–4541
 Bulletproof Vest Partnership, 4538
 Census of Juveniles in Residential Placement, 4538–4539
 Proposed Consent Decrees, 4541

National Archives and Records Administration

See Information Security Oversight Office
See Office of Government Information Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4542

National Endowment for the Humanities**NOTICES**

Meetings:
 Humanities Panel, 4543–4544

National Foundation on the Arts and the Humanities

See National Endowment for the Humanities

National Institutes of Health**NOTICES**

Government-Owned Inventions; Availability for Licensing, 4501–4502
 Meetings:
 Center for Scientific Review, 4484–4486, 4489–4491, 4493, 4495–4498, 4500–4501
 Helping to End Addiction Long-term Multi-Disciplinary Working Group, 4499
 National Cancer Institute, 4486–4487, 4494
 National Center for Advancing Translational Sciences, 4484, 4487–4488
 National Eye Institute, 4503–4504
 National Heart, Lung, and Blood Institute, 4486, 4490, 4494–4495

National Institute of Allergy and Infectious Diseases, 4483–4484, 4488, 4491–4494, 4497
 National Institute of Dental and Craniofacial Research, 4495, 4498–4499
 National Institute of Diabetes and Digestive and Kidney Diseases, 4488–4489
 National Institute of Environmental Health Sciences, 4490, 4497, 4502
 National Institute of General Medical Sciences, 4503–4504
 National Institute of Mental Health, 4491
 National Library of Medicine, 4488, 4499, 4502–4503
 Office of the Director, 4492–4493, 4495
 Prospective Grant of an Exclusive Patent License:
 Treatment of Acute Lymphoblastic Leukemia, T-cell Lymphoma, and Non-small Cell Lung Cancer Using the 4A10 Antibody and Fragments Thereof, 4492

National Oceanic and Atmospheric Administration

RULES

Fisheries of the Northeastern United States:
 Northeast Skate Complex; Framework Adjustment 6;
 Revised 2018–2019 Specifications, 4373–4376

NOTICES

General Provisions for Domestic Fisheries:
 Application for Exempted Fishing Permits, 4442
 Marine Mammals; Administration of the National Inventory, 4443–4446
 Permits:
 Marine Mammals and Endangered Species, 4441–4442

National Science Foundation

NOTICES

Request for Information:
 Action on Interoperability of Medical Devices, Data, and Platforms to Enhance Patient Care, 4544–4545

Navy Department

NOTICES

Environmental Impact Statements; Availability, etc.:
 Patuxent River Complex Testing and Training, 4457

Nuclear Regulatory Commission

RULES

List of Approved Spent Fuel Storage Casks:
 TN Americas LLC Standardized Advanced NUHOMS System, Certificate of Compliance No. 1029, Amendment No. 4, 4309

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4545–4549
 Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Invoice Submissions by Contractors for NRC Contracts/Invoices, 4546–4547

Ocean Energy Management Bureau

NOTICES

Oil and Gas Lease Sale:
 Gulf of Mexico Outer Continental Shelf, 4525–4532

Office of Government Information Services

NOTICES

Meetings:
 Freedom of Information Act Advisory Committee, 4542–4543

Patent and Trademark Office

PROPOSED RULES

Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants, 4393–4403

Securities and Exchange Commission

PROPOSED RULES

Risk Mitigation Techniques for Uncleared Security-Based Swaps, 4614–4675

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4549–4551
 Program for Allocation of Regulatory Responsibilities: Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE American LLC, et al., 4554–4562
 Self-Regulatory Organizations; Proposed Rule Changes:
 Cboe BZX Exchange, Inc., 4584–4589
 Cboe C2 Exchange, Inc., 4571–4573
 Cboe EDGA Exchange, Inc., 4551–4553
 Cboe EDGX Exchange, Inc., 4581–4583
 Cboe Exchange, Inc., 4562–4567
 ICE Clear Credit LLC, 4570–4571
 New York Stock Exchange LLC, 4553–4554, 4567–4569
 NYSE Arca, Inc., 4573–4581, 4589–4594
 Public Company Accounting Oversight Board, 4594–4597

Social Security Administration

RULES

Prohibiting Persons with Certain Criminal Convictions from Serving as Representative Payees, 4323–4326

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 4597–4600

Surface Transportation Board

NOTICES

Abandonment Exemptions:
 Canton Railroad Co. in Baltimore City, MD, 4601
 Lease and Operation Exemption:
 San Francisco Bay Railroad, Inc.; San Francisco Port Commission, 4601–4602
 Renewal of Lease Exemption with Interchange Commitment:
 R. J. Corman Railroad Co./Western Ohio Line; Norfolk Southern Railway Co., 4600
 Trackage Rights Exemption:
 Union Pacific Railroad Co.; West Memphis Base Railroad, LLC, 4600

Transportation Department

See Federal Aviation Administration
 See Federal Motor Carrier Safety Administration

NOTICES

Privacy Act; Systems of Records, 4605–4609

Treasury Department

See Foreign Assets Control Office

U.S. Citizenship and Immigration Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 AABB Accredited Laboratory Testing; Rapid DNA prototype Accelerated Nuclear DNA Equipment by NetBio; Rapid DNA prototype RapidHIT200 by IntegenX, 4522

Genealogy Index Search Request and Genealogy Records Request, 4519–4520
Record of Abandonment of Lawful Permanent Resident Status, 4521
USCIS Case Status Online, 4520–4521
USCIS Tip Form, 4518–4519
Waiver of Rights, Privileges, Exemptions and Immunities, 4522–4523

U.S. Customs and Border Protection

NOTICES

Environmental Impact Statements; Availability, etc.:
Bog Creek Road Project; Draft Records of Decision, 4509–4513

U.S.-China Economic and Security Review Commission

NOTICES

Hearing, 4609–4610

Veterans Affairs Department

RULES

Claims and Appeals Modernization; Correction, 4336–4338

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Vocational Rehabilitation for Veterans with Service-connected Disabilities, 4610–4611
Meetings:
Special Medical Advisory Group, 4610

Separate Parts In This Issue

Part II

Securities and Exchange Commission, 4614–4675

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

932.....4307

Proposed Rules:

205.....4377

985.....4381

10 CFR

72.....4309

12 CFR

211.....4309

238.....4309

14 CFR39 (5 documents) ...4310, 4313,
4315, 4318, 4320**Proposed Rules:**

39.....4387

17 CFR**Proposed Rules:**

240.....4614

20 CFR

404.....4323

408.....4323

416.....4323

32 CFR

199.....4326

33 CFR

165.....4333

Proposed Rules:

100.....4390

37 CFR**Proposed Rules:**

2.....4393

11.....4393

38 CFR

3.....4336

8.....4336

14.....4336

19.....4336

20.....4336

21.....4336

40 CFR

52.....4338

180 (2 documents)4340,
4345**Proposed Rules:**52 (5 documents) ...4403, 4407,
4411, 4422, 4426

81 (3 documents)4422, 4426

47 CFR

36.....4351

48 CFR

Ch. 24360

204.....4362

206.....4364

211.....4366

212 (3 documents)4362,
4368, 4370215 (2 documents)4364,
4368

234.....4364

235.....4364

236.....4371

239.....4368

247.....4370

252 (3 documents)4362,
4368, 4370**Proposed Rules:**

215.....4429

217.....4429

50 CFR

648.....4373

Rules and Regulations

Federal Register

Vol. 84, No. 32

Friday, February 15, 2019

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

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-SC-18-0061; SC18-932-1 FR]

Olives Grown in California; Establish Procedures To Meet Via Electronic Communications

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Olive Committee (Committee) to establish procedures to conduct meetings and voting using electronic means of communication.

DATES: Effective March 18, 2019.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Terry Vawter, Senior Marketing Specialist, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: Kathie.Notoro@usda.gov or Terry.Vawter@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.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (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 producers and handlers of olives operating within the area of production.

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 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 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.

On May 17, 2018 (83 FR 22831), the Agricultural Marketing Service published a final rule amending 7 CFR part 900, the general regulations for federal fruit, vegetable, and specialty crop marketing agreements and orders, to authorize the use of electronic means of communication for meetings and voting.

During a meeting on June 13, 2018, the Committee unanimously recommended adoption of modern communication methods to conduct Committee meetings, as outlined in the **Federal Register** final rule referenced above (83 FR 22831). On August 17, 2018, the Committee unanimously approved the recommended procedures for the use of communication technology. This rule establishes those procedures in a new § 932.136, Use of communication technology under Subpart B—Administrative Requirements.

The Order currently states that the Committee may only meet in assembled, in-person, meetings and that voting may only be conducted at meetings or via mail or telegraph. Such limitations present logistical problems for many Committee members since membership is widely distributed across California. Some members travel over 400 miles to attend a Committee meeting, thus resulting in lost work hours and increased costs for the Committee. Allowing the Committee to conduct meetings via electronic means of communication will likely result in increased member participation and productivity at a reduced cost, as well as greater potential for meeting quorum and voting requirements.

The Committee recommended that audio or audiovisual technology (AVT) that facilitates open communication and effectively assembles Committee members be used to conduct meetings by AVT or partial in-person meetings (meaning some members not present participate in an in-person meeting via technology). These meetings are subject to the same quorum and voting requirements currently in effect for in-person meetings under § 932.36. These requirements define a quorum as a majority of the 16-member Committee, of which at least half are producer members and half are handler members. Voting requirements state that a passing recommendation must receive a majority vote, with at least half of the voting members representing producers and half representing handlers. For recommendations regarding grade and size, a minimum of ten votes representing five producer and five handler members are necessary for approval. The requirements further state that issues to be voted on shall be explained accurately and fully, and that

all votes cast will be confirmed through a roll call.

Regarding casting votes electronically, those votes are subject to the same requirements currently in effect for mail voting in § 932.36. These requirements state that advanced notice, as well as an accurate, full and identical description of the issues to be voted on, be given to all members. For a recommendation to pass, at least 14 affirmative votes representing seven producer and seven handler members are required.

The Committee recommended these changes to provide an opportunity to conduct meetings more efficiently and cost-effectively; use of audio and/or audiovisual communication technology will result in time and cost savings to the Committee and its members by allowing for meetings to be conducted with all or a portion of its membership attending by audio and/or AVT.

Final 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 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 approximately 1,100 producers of olives in the production area and two handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts 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).

Based on National Agricultural Statistics Service (NASS) information, the average price to producers for the 2017 crop year was \$974.00 per ton, and total assessable volume for the 2017 crop year was 83,799 tons. Based on production, price paid to producers, and the total number of California olive producers, the average annual producer revenue is less than \$750,000 (\$974.00 times 83,799 tons equals \$81,620,226, divided by 1,100 producers equals an average annual producer revenue of \$74,200). Based on Committee data,

both handlers may be classified as large entities under the SBA's definitions because their annual receipts are greater than \$7,500,000.

This rule does not impose additional costs on handlers or producers of any size. Committee members are expected to see a reduction in their travel expenses and time lost from work to attend Committee meetings in person. Thus, this rule reduces the cost burden on both handlers and producers.

The Committee considered the alternative of making no changes to the regulations. However, it was determined that by taking no action, the Committee is unnecessarily limiting the participation of some members due to time constraints and travel considerations. Therefore, the Committee determined that recommending this change was in the best interest of the Committee, its members, and the industry.

Like all Committee meetings, the June 13, 2018, meeting was public and widely publicized throughout the production area. All entities, both large and small, were able to express their views on this issue and participate in Committee deliberations. Following the meeting, ballots along with the proposed procedures were sent to all Committee members on July 31, 2018, and the mail vote concluded on August 17, 2018. The proposal received unanimous support.

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 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 rule imposes no additional reporting or recordkeeping requirements on either small or large California olive 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 final 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 proposed rule concerning this action was published in the **Federal Register** on November 16, 2018 (83 FR 57691). Copies of the proposed rule were provided to all olive producers and handlers. The proposal was also made available through the internet by USDA and the Office of Federal Register. A 30-day comment period ending December 17, 2018, was provided for interested persons to respond to the proposal.

One comment was received stating that all information communicated should be placed on the labels of jars of olives. After further review of the comment, it was determined to be outside the scope of this action. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 932.136 to subpart B to read as follows:

§ 932.136 Use of communication technology.

The Committee may conduct meetings by any means of audio and/or audiovisual communication technology available that effectively assembles members and alternates, and facilitates open communication; *Provided*, That, quorum and voting requirements specified in § 932.36 for physically assembled meetings shall apply. The Committee may also vote electronically; *Provided*, That, such voting shall be subject to the same requirements specified for mail voting in § 932.36.

Dated: February 12, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019-02517 Filed 2-14-19; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2018-0265]

RIN 3150-AK20

List of Approved Spent Fuel Storage Casks: TN Americas LLC Standardized Advanced NUHOMS® System, Certificate of Compliance No. 1029, Amendment No. 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of March 12, 2019, for the direct final rule that was published in the **Federal Register** on December 27, 2018. This direct final rule amended the NRC's spent fuel storage regulations by revising the "List of approved spent fuel storage casks" to include Amendment No. 4 to Certificate of Compliance No. 1029 for the TN Americas LLC Standardized Advanced NUHOMS® Horizontal Modular Storage System.

DATES: *Effective Date:* The effective date of March 12, 2019, for the direct final rule published December 27, 2018 (83 FR 66585), is confirmed.

ADDRESSES: Please refer to Docket ID NRC-2018-0265 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-2018-0265. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For

problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The proposed amendment to the certificate of compliance, the proposed changes to the technical specifications, and the preliminary safety evaluation report are available in ADAMS under Accession No. ML18263A044. The final amendment to the certificate of compliance, final changes to the technical specifications, and final safety evaluation report can also be viewed in ADAMS under Accession No. ML19036A557.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

William Allen, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-6877; email: William.Allen@nrc.gov or Edward M. Lohr, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-0253; email: Edward.Lohr@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

On December 27, 2018 (83 FR 66585), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* by revising the "List of approved spent fuel storage casks" to include Amendment No. 4 to Certificate of Compliance No. 1029 for the TN Americas LLC Standardized Advanced NUHOMS® Horizontal Modular Storage System. Amendment No. 4 revised the technical specifications of the certificate of compliance to: Clarify the applicability of unloading procedures and training modules relative to spent fuel pool availability; credit the use of the installed temperature monitoring system specified in lieu of performing daily visual vent inspections; establish dose rates on the front inlet bird screen and the door of the concrete storage module for the Advanced Horizontal Storage Module; modify the criteria for performing Advanced Horizontal Storage Module air vent visual inspections; identify the blocked vent time limitations for each of the 24PT1 and 24PT4 dry shielded canisters; and provide a new temperature rise value for the Advanced Horizontal Storage Module with a loaded 24PT4 dry shielded canister.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule

would become effective on March 12, 2019. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Because no significant adverse comments were received, the direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 12th day of February 2019.

For the Nuclear Regulatory Commission.

Cindy K. Bladley,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019-02492 Filed 2-14-19; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 238

[Docket No. R-1569]

RIN 7100-AE82

Large Financial Institution Rating System; Regulations K and LL; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correcting amendments.

SUMMARY: On November 21, 2018, the Board of Governors of the Federal Reserve System (Board) published a final rule in the **Federal Register** regarding the Large Financial Institution Rating System. That document included two typographical errors in "Appendix A—Text of Large Financial Institution Rating System" relating to the description of the conditionally meets expectation rating. This document corrects those typographical errors.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT:

Benjamin McDonough, Assistant General Counsel, (202) 452-2036, Scott Tkacz, Senior Counsel, (202) 452-2744, Keisha Patrick, Senior Counsel, (202) 452-3559, or Chris Callanan, Counsel, (202) 452-3594, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: The Board is making the following corrections to

the final rule that was published in the **Federal Register** on November 21, 2018 (83 FR 58724).

Note: Appendix A does not appear in the Code of Federal Regulations.

Appendix A—Text of Large Financial Institution Rating System (Corrected)

1. On page 58737, second column, line 25 from the top, “capital planning and position” is corrected to read “liquidity risk management and positions”; and

2. On page 58738, third column, line 28 from the top, “capital planning and position” is corrected to “governance and controls”.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019-02516 Filed 2-14-19; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0788; Product Identifier 2018-NM-004-AD; Amendment 39-19544; AD 2019-01-05]

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 A330-200, -200F, and -300 series airplanes. This AD was prompted by a revision of the airworthiness limitations section (ALS), which provides new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. This AD requires revising the existing maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 22, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: airworthiness.A330-A340@airbus.com; internet: <http://www.airbus.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-2018-0788.

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-2018-0788; 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3229.

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 A330-200, -200F, and -300 series airplanes. The NPRM published in the **Federal Register** on August 31, 2018 (83 FR 44510). The NPRM was prompted by a revision of the ALS, which provides new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. The NPRM proposed to require revising the existing maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations.

We are issuing this AD to address reduced airplane control due to the failure of system components.

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Union, has issued EASA AD 2017-0228, dated November 21, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus SAS Model A330 and A340 series airplanes. The MCAI states:

The airworthiness limitations are currently defined and published in the Airbus A330 and A340 Airworthiness Limitations Section (ALS) documents. The airworthiness limitations applicable to the System Equipment Maintenance Requirements, which are approved by EASA, are specified in Airbus A330 and A340 ALS Part 4. Failure to comply with these instructions could result in an unsafe condition.

EASA issued AD 2016-0011 [which corresponds to FAA AD 2017-05-10, Amendment 39-18821 (82 FR 13379, March 13, 2017) (“AD 2017-05-10”)] to require the actions as specified in Airbus A330 and A340 ALS Part 4 at Revision 05 and Revision 04, respectively.

Since this [EASA] AD was issued, Airbus published Revision 06 and Revision 05, respectively, of Airbus A330 and A340 ALS Part 4, which introduce new and more restrictive maintenance requirements and/or airworthiness limitations.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016-0011, which is superseded, and requires accomplishment of the actions specified in Airbus A330 ALS Part 4 Revision 06, or A340 ALS Part 4 Revision 05, as applicable.

The unsafe condition is reduced control of the airplane due to the failure of system components. 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-2018-0788.

Comments

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

Request To Include Later Version of the Service Information

American Airlines (AAL) requested that we include Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018, as the appropriate source of service information. AAL indicated that the variation document increases the flight cycle life limitation of trimmable horizontal stabilizer (THS) actuator P/N 47172-540 from 10,000 flight cycles to 20,000 flight cycles. AAL also pointed out an alternative method of compliance (AMOC) for AD 2017-05-10 has been

approved to allow the incorporation of the variation document into AAL's maintenance program (AMOC AIR-676-18-026R1, dated August 13, 2018).

We agree with the commenter's request for the reasons provided. We have revised paragraphs (g) and (h) of this AD to include Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018, as an appropriate source of service information.

Conclusion

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

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

Airbus SAS has issued the following service information.

- A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017. This service information describes preventative maintenance requirements and associated airworthiness limitations applicable to aircraft systems susceptible to aging effects.
- A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018. This service information describes preventative maintenance requirements and associated airworthiness limitations applicable to the THS actuator P/N 47172-540 and changes the flight cycle life limitation from 10,000 flight cycles to 20,000 flight cycles.

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 104 airplanes of U.S. registry.

We have determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per workhour).

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):

2019-01-05 Airbus SAS: Amendment 39-19544; Docket No. FAA-2018-0788; Product Identifier 2018-NM-004-AD.

(a) Effective Date

This AD is effective March 22, 2019.

(b) Affected ADs

This AD affects AD 2017-05-10, Amendment 39-18821 (82 FR 13379, March 13, 2017) ("AD 2017-05-10").

(c) Applicability

This AD applies to Airbus SAS Model A330-201, A330-202, A330-203, A330-223, A330-243, A330-223F, A330-243F, A330-301, A330-302, A330-303, A330-321, A330-322, A330-323, A330-341, A330-342, and A330-343 airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before September 18, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of the airworthiness limitations section (ALS), which provides new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. We are issuing this AD to prevent

reduced airplane control due to the failure of system components.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, by incorporating Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018. The initial compliance times for the actions specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, or the actions specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018, are within the applicable compliance times specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; or within 90 days after the effective date of this AD; whichever occurs later; except as required by paragraph (h) of this AD.

(h) Exceptions to Initial Compliance Times

(1) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar compliance time for elevator servo-controls having part number (P/N) SC4800-2, SC4800-3, SC4800-4, SC4800-6, SC4800-7, or SC4800-8 as "August 31, 2004," the calendar compliance time is June 13, 2007 (34 months after August 13, 2004 (the effective date of AD 2004-13-25, Amendment 39-13707 (69 FR 41394, July 9, 2004))).

(2) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar compliance time for spoiler servo-controls (SSCs) having P/N 1386A0000-01, 1386B0000-01, 1387A0000-01, or 1387B0000-01 as "December 31, 2003," the calendar compliance time is November 19, 2005 (13 months after October 19, 2004 (the effective date of AD 2004-18-

14, Amendment 39-13793 (69 FR 55326, September 14, 2004))).

(3) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar compliance time for elevator servo-controls having P/N SC4800-73, SC4800-93, SC4800-103, and SC4800-113 as "June 30, 2008," the calendar compliance time is September 16, 2009 (17 months after April 16, 2008 (the effective date of AD 2008-06-07, Amendment 39-15419 (73 FR 13103, March 12, 2008; corrected April 15, 2008 (73 FR 20367)))).

(4) The initial compliance time for replacement of the retraction brackets of the main landing gear (MLG) having a part number specified in paragraphs (h)(4)(i) through (h)(4)(xvi) of this AD is before the accumulation of 19,800 total landings on the affected retraction brackets of the MLG, or within 900 flight hours after April 9, 2012 (the effective date of AD 2012-04-07, Amendment 39-16963 (77 FR 12989, March 5, 2012)), whichever occurs later.

- (i) 201478303.
- (ii) 201478304.
- (iii) 201478305.
- (iv) 201478306.
- (v) 201478307.
- (vi) 201478308.
- (vii) 201428380.
- (viii) 201428381.
- (ix) 201428382.
- (x) 201428383.
- (xi) 201428384.
- (xii) 201428385.
- (xiii) 201428378.
- (xiv) 201428379.
- (xv) 201428351.
- (xvi) 201428352.

(5) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar compliance time for the modification of SSCs on three hydraulic circuits having P/N MZ4339390-01X, MZ4306000-01X, MZ4339390-02X, MZ4306000-02X, MZ4339390-10X, or MZ4306000-10X as "March 5, 2010," the calendar compliance time is April 14, 2011 (18 months after October 14, 2009 (the effective date of AD 2009-18-20, Amendment 39-16017 (74 FR 46313, September 9, 2009) ("AD 2009-18-20"))).

(6) Where Note (17) of Sub-Part 1, "Life Limits," of Section 3, "Systems Life-Limited Components," of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar date of "September

5, 2008," as a date for the determination of accumulated flight cycles since the airplane's initial entry into service, the date is October 14, 2009 (the effective date of AD 2009-18-20).

(7) Where Note (17) of Sub-Part 1, "Life Limits," of Section 3, "Systems Life-Limited Components," of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017; or Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018; defines a calendar compliance time as "March 5, 2010," for the modification of affected servo controls, the calendar compliance time is April 14, 2011 (18 months after October 14, 2009 (the effective date of AD 2009-18-20)).

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Terminating Actions for the Requirements of AD 2017-05-10

Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 2017-05-10.

(k) 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 (l)(2) of this AD. Information may be emailed to: 9-ANM-116-AMOCREQUESTS@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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017-0228, dated November 21, 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-2018-0788.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3229.

(m) Material Incorporated by Reference

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

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

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017.

(ii) Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Variation 6.1, dated January 16, 2018.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: airworthiness.A330-A340@airbus.com; internet: <http://www.airbus.com>.

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

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

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019-02161 Filed 2-14-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0902; Product Identifier 2018-NM-047-AD; Amendment 39-19543; AD 2019-01-04]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 787 series airplanes. This AD was prompted by a report of an uncommanded descent and turn that occurred after an inflight switch to the spare flight management function (FMF). This AD requires an inspection of the flight management system (FMS) to determine if certain operational program software (OPS) is installed and installation of new FMS OPS and a software check if necessary. For certain airplanes, this AD also requires concurrent actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 22, 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-2018-0902.

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-2018-0902; 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:

Nelson Sanchez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3543; email: nelson.sanchez@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 787 series airplanes. The NPRM published in the **Federal Register** on October 23, 2018 (83 FR 53404). The NPRM was prompted by a report of an uncommanded descent and turn that occurred after an inflight switch to the spare FMF. The NPRM proposed to require an inspection of the FMS to determine if certain OPS is installed and installation of new FMS OPS and a software check if necessary. For certain airplanes, it also proposed to require concurrent actions.

We are issuing this AD to address the retention of stale flight data in the spare FMF, which, if not addressed, could result in controlled flight into terrain or a mid-air collision.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comments received. Boeing, Delta Air Lines, and B McCann indicated their 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

We reviewed Boeing Alert Requirements Bulletin B787-81205-SB340038-00 RB, Issue 001, dated November 16, 2017. The service information describes procedures for installing FMS OPS Block Point 3B (BP3B) and performing a software check.

We also reviewed Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016. The service information describes procedures for installing FMS OPS Block Point 3 (BP3) and performing a software check. 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 144 airplanes of U.S. registry. We estimate

the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Records check or inspection	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$12,240.
Software installation	4 work-hours × \$85 per hour = \$340	0	340	Up to \$48,960.
Concurrent actions	4 work-hours × \$85 per hour = \$340	0	340	Up to \$48,960.

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):

2019-01-04 The Boeing Company:

Amendment 39-19543; Docket No. FAA-2018-0902; Product Identifier 2018-NM-047-AD.

(a) Effective Date

This AD is effective March 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report of an uncommanded descent and turn that occurred after an inflight switch to the spare flight management function (FMF), due to the

retention of stale flight data in the spare FMF. We are issuing this AD to address the retention of stale flight data in the spare FMF, which, if not addressed, could result in controlled flight into terrain or a mid-air collision.

(f) Compliance

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

(g) Required Actions

(1) For Boeing Model 787 series airplanes that have an original certificate of airworthiness or export certificate of airworthiness issued on or before the effective date of this AD: Within 12 months after the effective date of this AD, inspect the flight management system (FMS) to determine if operational program software (OPS) part number (P/N) HNP5F-AL11-5010 or HNP58-AL11-5006 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the FMS OPS can be conclusively determined from that review.

(2) If, during any inspection or records review required by paragraph (g)(1) of this AD, FMS OPS P/N HNP5F-AL11-5010 or HNP58-AL11-5006 is found: Within 12 months after the effective date of this AD, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787-81205-SB340038-00 RB, Issue 001, dated November 16, 2017; except where Boeing Alert Requirements Bulletin B787-81205-SB340038-00 RB, Issue 001, dated November 16, 2017, specifies installing 34 FMS OPS Block Point 3B, P/N HNP5E-AL11-5011, this AD requires installing P/N HNP5E-AL11-5011 or later-approved software versions. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or the Boeing Commercial Airplanes Organization Designation Authorization (ODA) after issuance of Boeing Alert Requirements Bulletin B787-81205-SB340038-00 RB, Issue 001, dated November 16, 2017.

Note 1 to paragraph (g) of this AD:

Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Alert Service Bulletin B787-81205-SB340038-00, Issue 001, dated November 16, 2017, which is referred to in Boeing Alert Requirements Bulletin B787-

81205-SB340038-00 RB, Issue 001, dated November 16, 2017.

(h) Concurrent Requirements

For airplanes identified in Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016; Prior to or concurrently with the action required by paragraph (g) of this AD, install FMS, Thrust Management System (TMS), and Communication Management Function (CMF) software identified in Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016, and do a software check, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016; except where Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016, specifies installing software, this AD requires installing that software or later-approved software versions. Later-approved software versions are only those Boeing software versions that are approved as a replacement for the applicable software, and are approved as part of the type design by the FAA or the Boeing Commercial Airplanes ODA after issuance of Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016. If the software check fails, before further flight, accomplish corrective actions and repeat the software check and applicable corrective actions until the software check is passed.

(i) Parts Installation Prohibition

As of the effective date of this AD, installation on any airplane of FMS OPS version HNP5F-AL11-5010 or HNP58-AL11-5006 is prohibited, except as required by paragraph (h) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787-81205-SB340013-00, Issue 001, dated December 23, 2015.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes 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.

(l) Related Information

(1) For more information about this AD, contact Nelson Sanchez, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3543; email: nelson.sanchez@faa.gov.

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

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787-81205-SB340038-00 RB, Issue 001, dated November 16, 2017.

(ii) Boeing Service Bulletin B787-81205-SB340013-00, Issue 002, dated May 6, 2016.

(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 January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019-02160 Filed 2-14-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2018-0638; Product Identifier 2018-NM-016-AD; Amendment 39-19552; AD 2019-02-05]

RIN 2120-AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013-11-03, which applied to certain Viking Air Limited Model CL-215-1A10 and CL-215-6B11 (CL-215T Variant) airplanes. AD 2013-11-03 required repetitive detailed inspections for cracking of the left-hand (LH) and right-hand (RH) wing lower skin, and repair if necessary. This AD requires repetitive borescope inspections of the LH and RH wing lower skin and repetitive eddy current inspections of the LH and RH wing front and rear lower spar caps. This AD was prompted by reports of a fractured wing lower rear spar cap and reinforcing strap and a report of cracking of the wing lower skin and rear spar. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 22, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1-250-656-7227; fax +1-250-656-0673; email acs-technical.publications@vikingair.com; internet <http://www.vikingair.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0638.

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–2018–0638; 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:

Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013) (“AD 2013–11–03”). AD 2013–11–03 applied to certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. The NPRM published in the **Federal Register** on August 2, 2018 (83 FR 37768). The NPRM was prompted by reports of a fractured wing lower rear spar cap and reinforcing strap and a report of cracking of the wing lower skin and rear spar. The NPRM proposed to require repetitive borescope inspections of the LH and RH wing lower skin and repetitive eddy current inspections of the LH and RH wing front and rear lower spar caps. We are issuing this AD to address cracked wing structure, which could result in failure of the wing.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2013–11R1, dated October 16, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. The MCAI states:

While performing modifications on a CL–215–1A10 aeroplane, an operator discovered that the wing lower rear spar cap and reinforcing strap were fractured at Wing Stations (WS) 49.5 and 50 respectively and the rear spar web and wing lower skin were also cracked. It is suspected that a crack initiated at the wing lower spar cap, leading

to its failure, the subsequent failure of the reinforcing strap and cracking of the spar web and wing lower skin. The damage was outside of the area addressed by the repetitive ultrasonic inspections required by [Canadian] AD CF–1992–26R2 [which corresponds to FAA AD 2012–11–04, Amendment 39–17067 (77 FR 32892, June 4, 2012)] and was found 95 hours air time after the last ultrasonic inspection.

Failure and cracking of the above-noted wing structure, if not detected, could result in failure of the wing.

In order to mitigate the unsafe condition, [Canadian] AD CF–2013–11 [which corresponds to FAA AD 2013–11–03] was released. However, further analysis has indicated the need for repetitive eddy current and borescope inspections. Therefore, Revision 1 of this [Canadian] AD mandates a repetitive detailed inspection of the wing lower skin using a borescope, changes the one-time eddy current inspection of the lower front and rear spar caps to a repetitive inspection and eliminates the one-time detailed inspection with fuel bladders removed.

The requirements of [Canadian] AD CF–1992–26R2 remain applicable.

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–2018–0638.

Comments

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

Request To Use Time-in-Service Hours Rather Than Flight Hours

The commenter, Adam Geber, recommended using time-in-service hours instead of flight hours in the proposed AD. The commenter stated that maintenance hourly requirements are based on time-in-service rather than flight time, as defined in 14 CFR 1.1. The commenter further asserted that the term “flight hour” is not defined in 14 CFR 1.1, and that many 14 CFR part 91 regulations prescribe hourly maintenance requirements based on time-in-service, with no requirement to track flight time for maintenance purposes.

We disagree with the commenter’s recommended changes, because flight hours, which are in current use and well understood in the aviation industry, are the most effective way of addressing the unsafe condition identified in this AD. Flight hours were used in the engineering evaluation for this AD, and the required actions of this AD are based on that evaluation. The use of flight

hours in this AD is also in keeping with the previous related ADs, which use that measure for compliance times and inspection intervals. Additionally, since flight hours are used in this AD, operators are required to track them. AD requirements are not restricted by the definitions in 14 CFR 1.1 or the part 91 regulations quoted by commenter. We have not changed this AD in this regard.

Explanation of Change to Manufacturer Name Specified in AD 2013–11–03

We have revised references to the aircraft manufacturer name specified in AD 2013–11–03 throughout this final rule to identify the aircraft manufacturer name as published in the most recent type certificate data sheet (TCDS) for the affected models.

Conclusion

We reviewed the relevant data, considered the comment 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

Bombardier has issued Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. This service information describes procedures for detecting cracks using repetitive borescope inspections of the LH and RH wing lower skin and repetitive eddy current inspections of the LH and RH wing front and rear lower spar caps. 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 4 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
Borescope and eddy current inspections.	8 work-hours × \$85 per hour = \$680 per inspection cycle.	\$0	\$680 per inspection cycle	\$2,720 per inspection cycle.

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

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

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013), and adding the following new AD:

2019–02–05 Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited): Amendment 39–19552; Docket No. FAA–2018–0638; Product Identifier 2018–NM–016–AD.

(a) Effective Date

This AD is effective March 22, 2019.

(b) Affected ADs

This AD replaces AD 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013) ("AD 2013–11–03").

(c) Applicability

This AD applies to the Viking Air Limited (Type Certificate previously held by Bombardier, Inc.; Canadair Limited) airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–215–1A10 airplanes, serial numbers (S/Ns) 1001 through 1125 inclusive.

(2) Model CL–215–6B11 (CL–215T Variant) airplanes, S/Ns 1056 through 1125 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports of a fractured wing lower rear spar cap and reinforcing strap and a report of cracking of the wing lower skin and rear spar. We are issuing this AD to address cracked wing structure, which could result in failure of the wing.

(f) Compliance

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

(g) Repetitive Borescope Inspection

Within 50 flight hours after the effective date of this AD: Using a borescope, do a detailed inspection for cracking of the left-hand (LH) and right-hand (RH) wing lower skin between wing station (WS) 45.00 and 51.00, in accordance with Part A of Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. Repeat the inspection thereafter at intervals not to exceed 50 flight hours until the initial eddy current inspection required by paragraph (h) of this AD has been accomplished. After accomplishment of the initial eddy current inspection required by paragraph (h) of this AD, the borescope inspection interval required by this paragraph may be extended to 300 flight hours.

(h) Repetitive Eddy Current Inspections

Within 300 flight hours after the effective date of this AD: Do an eddy current inspection for cracking of the LH and RH wing front and rear lower spar caps, in accordance with Parts C–1 and C–2 of Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. Repeat the inspection thereafter at intervals not to exceed 300 flight hours.

(i) Corrective Actions

If any crack, as defined in Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016, is found during any inspection required by paragraph (g) or paragraph (h) of this AD: Before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Credit for Previous Actions

This paragraph provides credit for the initial inspections required by paragraphs (g) and (h) of this AD if those actions were performed before the effective date of this AD

using Bombardier Alert Service Bulletin 215–A558, Revision 1, dated January 10, 2014; or Bombardier Alert Service Bulletin 215–A558, Revision 2, dated January 17, 2014.

(k) No Reporting Requirement

Although Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch.

(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, New York ACO Branch, FAA; or TCCA; or Viking Air Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2013–11R1, dated October 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–2018–0638.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531.

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

(n) Material Incorporated by Reference

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

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

(i) Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016.

(ii) [Reserved].

(3) For service information identified in this AD, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email acs-technical.publications@vikingair.com; internet <http://www.vikingair.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 February 1, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–02162 Filed 2–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0581; Product Identifier 2018–NM–029–AD; Amendment 39–19547; AD 2019–01–08]

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, –200LR, –300, and –300ER series airplanes. This AD was prompted by a report that showed a non-compliance exists on some in-service galley attendant seat fitting installations. The non-compliance could result in flight attendant seats failing in a high-G crash. This AD requires modifications for galley mounted seat fittings. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 22, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 22, 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–2018–0581.

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–2018–0581; 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:

Allison Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3564; email: Allison.Buss@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, –200LR, –300, and –300ER series airplanes. The NPRM published in the **Federal Register** on July 6, 2018 (83 FR 31509). The NPRM was prompted by a report that showed a non-compliance exists on some in-service galley attendant seat fitting installations. The NPRM proposed to require modifications for galley mounted seat fittings.

We are issuing this AD to address non-compliant flight attendant seats, which could fail in a high-G crash and result in potential injury to flight attendants and consequent inability of the flight attendants to assist with passenger evacuation in a timely manner.

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

Boeing indicated its support for the NPRM.

Request To Exclude Airplanes Without Affected Galleys

United Airlines recommended adding a statement to explain that if a reconfigured airplane’s affected galley has been removed or replaced, and the associated manuals have been updated, then that airplane would not be affected by the AD.

We do not agree to add the statement. This AD applies to each airplane identified in the Effectivity section of Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017. However, for airplanes that have been modified, repaired, or altered so that accomplishment of that service information is affected, then under the provisions of paragraph (h) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC). We have not changed this AD in this regard.

Request To Include Updated Service Information

Gary Chan, a private citizen, requested that the FAA review the expected revision of Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017. The commenter noted that Zodiac Aerospace Service Bulletin 1016G–25–34, referenced in that Boeing service

information, has been revised and it is expected that the Boeing service information will be updated accordingly. We infer that the commenter is also requesting that the FAA revise the NPRM to reference the updated service information.

We do not agree. We may not refer to any document that does not yet exist. In general terms, we are required by Office of the Federal Register (OFR) regulations for approval of materials “incorporated by reference,” as specified in 1 CFR 51.1(f), to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as “referenced” material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for “incorporation by reference.” See 1 CFR part 51. We do not consider that delaying this action until release of the revised Boeing service information is warranted, since sufficient service information exists. However, under the provisions of paragraph (h) of this AD, we will consider requests for approval to use revised service information if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the 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 Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017. This service information describes procedures for modifications for galley mounted seat fittings. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 50 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	7 work-hours × \$85 per hour = \$595	\$0	\$595	\$29,750

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 known 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):

2019–01–08 The Boeing Company:

Amendment 39–19547; Docket No. FAA–2018–0581; Product Identifier 2018–NM–029–AD.

(a) Effective Date

This AD is effective March 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that showed a non-compliance exists on some in-service galley attendant seat fitting installations. We are issuing this AD to address non-compliant flight attendant seats, which could fail in a high-G crash and result in potential injury to flight attendants and consequent inability of the flight attendants to assist with passenger evacuation in a timely manner.

(f) Compliance

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

(g) Required Actions

Within 6 years after the effective date of this AD, do all applicable actions identified as “RC” (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs

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

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

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

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

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

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

(i) Related Information

For more information about this AD, contact Allison Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3564; email: Allison.Buss@faa.gov.

(j) 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 Special Attention Service Bulletin 777–25–0649, Revision 1, dated October 6, 2017.

(ii) [Reserved]

(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 January 28, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–02159 Filed 2–14–19; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2018–0826; Product Identifier 2018–NE–27; Amendment 39–19553; AD 2019–03–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division (PW) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines. This AD was prompted by an in-flight failure of a 1st-stage low-pressure compressor (LPC) blade. This AD requires initial and repetitive thermal acoustic imaging (TAI) inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 22, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 22, 2019.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT, 06118; phone: 800–565–0140; fax: 860–565–5442; email: help24@pw.utc.com. You may view this

service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781-238-7759. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0826.

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-2018-0826; 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: Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7105; fax: 781-238-7199; email: jo-ann.theriault@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 PW PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090-3 turbofan engines. The NPRM published in the **Federal Register** on October 10, 2018 (83 FR 50862). The NPRM was prompted by an in-flight failure of a 1st-stage LPC blade. The NPRM proposed to require initial and repetitive TAI inspections for cracks in certain 1st-stage LPC blades and removal of those blades that fail inspection. We are issuing this AD to address the unsafe condition on these products.

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.

Request To Give Credit for Earlier Revisions of PW ASB

PW and Japan Airlines (JAL) requested that we revise the Credit for Previous Actions paragraph of this AD to give credit for revisions of Pratt & Whitney Alert Service Bulletin (ASB) PW4G-112-A72-268, earlier than Revision No. 6, dated August 5, 2014. PW and JAL reason that TAI inspections performed using earlier revisions of the PW ASB meet the requirements of this AD.

We agree. We revised the Credit for Previous Actions paragraph of this AD to give credit for accomplishing the initial TAI inspection if operators used Pratt & Whitney ASB PW4G-112-A72-268, Revision No. 6, dated August 5, 2014, or earlier revisions, because this meets the intended safety requirements of this AD.

Request To Clarify Installation Prohibition

PW and JAL requested that we revise the Installation Prohibition paragraph to align with the wording in Table 1, Step 3, of Pratt & Whitney ASB PW4G-112-A72-268, Revision No. 7, dated September 6, 2018, which states, “All blades that have never been TAI inspected but have accumulated greater than 1,000 cycles must be inspected prior to December 31, 2027.” JAL reasoned that the intent of the Installation Prohibition is the same as the PW ASB.

JAL also requested that we define “install 1st-stage LPC blade” and clarify that the Installation Prohibition paragraph does not prohibit removing and reinstalling 1st-stage LPC blades for the purpose of relubrication.

We partially agree. We agree that the intent of the Installation Prohibition section in the NPRM was the same as the PW ASB. We also agree that 1st-stage LPC blades that are removed solely for relubrication do not need to be inspected before reinstallation because this AD intends to inspect 1st-stage LPC blades at every M-flange separation. We do not agree, however, to modify the

Installation Prohibition paragraph as we have determined that this paragraph is unnecessary because the AD already requires the initial inspections at specific thresholds. These thresholds provide an acceptable level of safety. We removed the Installation Prohibition paragraph from this AD.

Support for the AD

The Air Line Pilots Association, Boeing Company, and the National Transportation Safety Board expressed support for the NPRM as written.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for 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 14 CFR Part 51

We reviewed Pratt & Whitney ASB PW4G-112-A72-268, Revision No. 7, dated September 6, 2018. The PW ASB describes procedures for performing 1st-stage LPC blade TAI inspections. 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 120 engines installed on 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	22 work-hours × \$85 per hour = \$1,870	\$0	\$1,870	\$224,400

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace 1st-stage LPC blade	0 work-hours × \$85 per hour = \$0	\$125,000	\$125,000

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019-03-01 Pratt & Whitney Division:
Amendment 39-19553; Docket No. FAA-2018-0826; Product Identifier 2018-NE-27-AD.

(a) Effective Date

This AD is effective March 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090-3 turbofan engines, with 1st-stage low-pressure compressor (LPC) blade, part numbers 52A241, 55A801, 55A801-001, 55A901, 55A901-001, 56A201, 56A201-001, or 56A221, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by an uncontained 1st-stage LPC blade failure. We are issuing this AD to prevent failure of the 1st-stage LPC blade. The unsafe condition, if not addressed, could result in uncontained blade release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) After the effective date of this AD, perform an initial thermal acoustic imaging (TAI) inspection of the 1st-stage LPC blades as follows:

(i) For 1st-stage LPC blades that have accumulated fewer than 6,500 cycles since new (CSN), perform a TAI inspection the next time the engine is separated at the M-flange, or prior to the 1st-stage LPC blade accumulating 7,000 CSN, whichever occurs first.

(ii) For 1st-stage LPC blades that have accumulated 6,500 or more CSN, or if the cycles since the blade was new cannot be determined, or if the cycles since the blade was last TAI inspected cannot be determined, perform a TAI inspection within 500 flight cycles or 180 days after the effective date of this AD, whichever occurs first.

(2) Thereafter, perform a TAI inspection of 1st-stage LPC blades every time the engine is separated at the M-flange and the blades have accumulated 1,000 or more flight cycles since the last TAI inspection, not to exceed 6,500 flight cycles since the last TAI inspection.

(3) If any 1st-stage LPC blade fails the inspection required by paragraph (g)(1) or (2) of this AD, remove the blade from service and replace with a part eligible for installation before further flight.

(4) The TAI inspection and disposition required for compliance with this AD must be accomplished by a method approved by the FAA. You can find a vendor that has an FAA-approved TAI inspection listed in the Vendor Services Section of Pratt & Whitney Alert Service Bulletin (ASB) PW4G-112-A72-268, Revision No. 7, dated September 6, 2018.

(h) Credit for Previous Actions

You may take credit for the initial TAI inspection required by paragraph (g)(1) of this AD if you performed the TAI inspection before the effective date of this AD using Pratt & Whitney ASB PW4G-112-A72-268, Revision No. 6, dated August 5, 2014, or earlier revisions.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

For more information about this AD, contact Jo-Ann Theriault, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7105; fax: 781-238-7199; email: jo-ann.theriault@faa.gov.

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 22, 2019.

(i) Pratt & Whitney Alert Service Bulletin PW4G-112-A72-268, Revision No. 7, dated September 6, 2018.

(ii) [Reserved].

(4) For Pratt & Whitney service information identified in this AD, contact Pratt & Whitney Division, 400 Main Street, East Hartford, CT, 06118; phone: 800-565-0140; fax: 860-565-5442; email: help24@pw.utc.com.

(5) You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759.

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

Issued in Burlington, Massachusetts, on February 7, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019-02453 Filed 2-14-19; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, and 416

[Docket No. SSA-2015-0006]

RIN 0960-AH78

Prohibiting Persons With Certain Criminal Convictions From Serving as Representative Payees

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are finalizing our proposed regulations on conducting background checks to prohibit persons convicted of certain crimes from serving as representative payees under the

Social Security Act (Act), as required by the Strengthening Protections for Social Security Beneficiaries Act of 2018.

DATES: These final rules will be effective March 18, 2019.

FOR FURTHER INFORMATION CONTACT:

Kevin Salamone, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0854. 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

Representative payees manage benefit payments for beneficiaries or recipients who are incapable, due to a mental or physical impairment, of managing their Social Security, Special Veterans Benefits, or Supplemental Security Income (SSI) payments, or of directing another person to manage those payments. Generally, if a beneficiary or recipient is under age 18, we will pay benefits to a representative payee; however, in certain situations, we make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits.¹ In cases where the beneficiary or recipient is 18 years or older, we select a representative payee if we believe that payment of benefits through a representative payee, rather than direct payment to the beneficiary, will better serve the beneficiary's interest. A representative payee may be an organization, such as a social service agency, or a person, such as a parent, relative, or friend of the beneficiary. We require a representative payee to use benefits in the beneficiary's best interest and, with certain exceptions, to report expenditures to us to ensure the representative payee is using funds appropriately.²

When a person or an organization requests to serve as a representative payee, we investigate the potential

¹ We use the word "beneficiary" to include both beneficiaries and recipients.

² Representative payees may receive an annual Representative Payee Report to account for the benefit payments received. In accordance with section 102 of the Strengthening Protections for Social Security Beneficiaries Act of 2018, Public Law 115-165, 132 Stat. 1257, 1260, we no longer require the following payees to complete an annual Representative Payee Report: (1) Natural or adoptive parents of a minor child beneficiary who primarily reside in the same household as the child; (2) a legal guardian of a minor child beneficiary who primarily resides in the same household as the child; (3) Natural or adoptive parents of a disabled adult beneficiary who primarily reside in the same household with the beneficiary; and (4) the spouse of a beneficiary.

representative payee to help ensure that the person or organization will perform the duties of a representative payee responsibly. We look at factors such as the potential representative payee's relationship to the beneficiary, any past performance as a representative payee for other beneficiaries, and any criminal history.

On April 13, 2018, the President signed into law the Strengthening Protections for Social Security Beneficiaries Act of 2018.³ Section 202 of the law⁴ codifies our current policy to conduct criminal background checks on representative payee applicants and to prohibit the selection of certain representative payee applicants who have a felony conviction of committing, attempting, or conspiring to commit certain crimes.⁵ In addition, the new law requires that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions set out in the law, and continue to do so at least once every five years.⁶

On October 11, 2018, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**.⁷ In the NPRM, we proposed to codify the requirements of section 202 to conduct background checks on representative payee applicants and to prohibit those representative payee applicants and representative payees with the statutorily enumerated felony convictions⁸ from serving as a

³ Public Law 115-165, 132 Stat. 1257.

⁴ 132 Stat. at 1267.

⁵ Section 202(d) of the law, 132 Stat. at 1271, provides that the requirements of section 202 "shall apply with respect to any individual appointed to serve as a representative payee pursuant to section 205(j), 807, or 1631(a)(2) of the Social Security Act on or after January 1, 2019."

⁶ Section 202(e) of Public Law 115-165, 132 Stat. at 1271-72. We may not apply these prohibitions as an absolute bar to serving as a representative payee if the representative payee applicant is the custodial parent of the minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained age 22, custodial spouse of the beneficiary, custodial grandparent of the minor child beneficiary, custodial court-appointed guardian of the beneficiary, parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits; or if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction.

⁷ 83 FR 51400. <https://www.federalregister.gov/documents/2018/10/11/2018-22168/prohibiting-persons-with-certain-criminal-convictions-from-serving-as-representative-payees>.

⁸ We proposed to add a new paragraph to §§ 404.2022 and 416.622 of our regulations to reflect the felony prohibitions in the legislation. We are prohibited from selecting representative payee applicants with a felony conviction of: (1) Human trafficking, (2) false imprisonment, (3) kidnapping, (4) rape and sexual assault, (5) first-degree

Continued

representative payee. We also proposed to implement the requirement that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions established in the law, and that we will continue to do so at least once every five years. We are adopting the proposed changes as final rules without revision.

In response to the NPRM, we received 11 timely submitted comments that addressed issues within the scope of our proposed rules. The comments are available through the eRulemaking docket, available online at www.regulations.gov, and then navigating to this rulemaking docket, SSA-2015-0006.

Public Comments and Discussion

Comment: Some commenters objected to the proposed rules in their entirety, stating that prohibiting individuals convicted of the specified felonies from being representative payees is discriminatory against these individuals based on their legal status as convicted felons. In a related concern, other commenters who objected to the proposed rule maintained that we should provide statistical data demonstrating that (1) felons exploited their role as representative payees, or (2) prohibiting a convicted felon from serving as a representative payee results in more protection for beneficiaries.

Response: We acknowledge the commenters' concerns regarding these prohibitions. However, these rules restate the statutory prohibitions enacted by Congress and signed into law by the President, and as such we do not have the discretion to adopt the commenters' suggestions.

Comment: Other commenters asked whether there was a statute of limitations on our review of past criminal convictions, indicating that a criminal conviction, even for one of the crimes specified in the proposed rule, should be disregarded after a long enough period of time has lapsed after the conviction. In this regard, commenters also asked which crimes will be included in our criminal background checks.

Response: The enacted statute and these final rules do not provide an exception based on how long in the past

homicide, (6) robbery, (7) fraud to obtain access to government assistance, (8) fraud by scheme, (9) theft of government funds or property, (10) abuse or neglect, (11) forgery, or (12) identity theft or identity fraud. As further provided in §§ 404.2022(f) and 416.622(f), we will also prohibit the selection of a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

a criminal conviction for one of the prohibited felonies may have occurred. Our criminal background checks look for all convictions for the prohibited felonies in the background history of a representative payee applicant and existing representative payees. Regarding the issue of which crimes will be included in our criminal background checks: Both the statute and this regulation list the specific crimes that prohibit individuals from becoming representative payees. However, we consider and evaluate all available information when we evaluate the suitability of a representative payee applicant. Accordingly, if our criminal background checks reveal convictions for a crime other than the ones listed as a qualifying bar in the statute and in this regulation, we may consider those convictions when we determine whether an applicant will be a suitable representative payee. While the convictions listed in the statute and in this regulation result in prohibition from serving as a representative payee, unless specifically excepted, we will not consider other convictions to absolutely prohibit the representative payee applicant from being selected as a representative payee.

Comment: Other commenters questioned whether a conviction for a prohibited felony would bar a person from serving as a representative payee for elderly parents or grandparents, or what would happen if a beneficiary only has prospective representative payees barred by these rules.

Response: The enacted statute and these final rules do not provide an exception for a child or grandchild with a prohibited felony to serve as a representative payee for either a parent or grandparent. However, under the statute and our rules, if the child or grandchild is the custodial court-appointed guardian of the beneficiary, or has received a Presidential or gubernatorial pardon for the conviction, we would not consider the conviction an absolute bar to serving as the representative payee.

Comment: One commenter disagreed with our usage of the term "custody" and "custodial spouse" because individuals who live at home with family, or in a group home, should not be interpreted as being in the family's custody. This commenter made suggestions for alternate language.

Response: We acknowledge the commenter's concern regarding the terminology, particularly in common usage. However, our use of "custodial" directly reflects the enacted statutory language.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with OMB and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB did not formally review the final rule.

Executive Order 13771

This final rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature and results in no more than de minimis costs.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.⁹

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; and 96.020—Special Benefits for Certain World War II Veterans)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Disability insurance, Old-Age, Survivors, Reporting and recordkeeping requirements, Social security.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

⁹ Sections 205(a), 702(a)(5), and 1631(d)(1).

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Nancy A. Berryhill,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we amend 20 CFR chapter III, parts 404, 408, and 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart U—Representative Payment

■ 1. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Amend § 404.2020 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 404.2020 Information considered in selecting a representative payee.

* * * * *

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

■ 3. Amend § 404.2022 by adding paragraph (f) to read as follows:

§ 404.2022 Who may not serve as a representative payee?

* * * * *

(f) Was convicted under Federal or State law of a felony for: Human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a

beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

■ 4. Amend § 404.2024 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

§ 404.2024 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(e)).

(10) Conduct a criminal background check on the payee applicant.

* * * * *

■ 5. Add § 404.2026 to read as follows:

§ 404.2026 How do we investigate an appointed representative payee?

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart F—Representative Payment

■ 6. The authority citation for subpart F of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

■ 7. Add § 408.626 to read as follows:

§ 408.626 How do we investigate an appointed representative payee?

After we select an individual or organization as your representative payee, we investigate him or her following the rules in § 404.2026 of this chapter.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—Representative Payment

■ 8. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 9. Amend § 416.620 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 416.620 Information considered in selecting a representative payee.

* * * * *

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

■ 10. Amend § 416.622 by adding paragraph (f) to read as follows:

§ 416.622 Who may not serve as a representative payee?

* * * * *

(f) Was convicted under Federal or State law of a felony for: Human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision

to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

■ 11. Amend § 416.624 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

§ 416.624 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 416.622(e)).

(10) Conduct a criminal background check on the payee applicant.

* * * * *

■ 12. Add § 416.626 to read as follows:

§ 416.626 How do we investigate an appointed representative payee?

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.

[FR Doc. 2019-02483 Filed 2-14-19; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD-2017-HA-0039]

RIN 0720-AB70

Establishment of TRICARE Select and Other TRICARE Reforms

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule implements the primary features of section 701 and partially implements several other sections of the National Defense Authorization Act for Fiscal Year 2017 (NDAA-17). The law makes significant changes to the TRICARE program, especially to the health maintenance organization (HMO)-like health plan, known as TRICARE Prime; to the preferred provider organization (PPO) health plan, previously known as TRICARE Extra and replaced by TRICARE Select; and to the third health care option, known as TRICARE Standard, which was terminated December 31, 2017, and is also replaced by TRICARE Select. The statute also adopts a new health plan enrollment system under TRICARE and new provisions for access to care, high value services, preventive care, and healthy lifestyles. In implementing the statutory changes, this final rule makes a number of improvements to TRICARE.

DATES: This rule is effective March 18, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ellis, Defense Health Agency, TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042-5101, telephone (703) 275-6234.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

An interim final rule (IFR) was published in the **Federal Register** on September 29, 2017 (82 FR 45438-45461) that established TRICARE Select and other TRICARE reforms. This rule is required to implement or partially implement several sections of NDAA-17, including sections 701, 706, 715, 718, and 729. As a “housekeeping” matter, this rule also includes necessary changes to the TRICARE program to conform to new statutory specifications enacted in the National Defense Authorization Act for Fiscal Year 2018 (NDAA-18) over which the Department has no administrative discretion. The legal authority for this rule also includes chapter 55 of title 10, United States Code. In implementing section 701 and partially implementing several other sections of NDAA-17, this rule advances all four components of the Military Health System’s quadruple aim of improved readiness, better care, better health, and lower cost. The aim of improved readiness is served by reinforcing the vital role of the TRICARE Prime health plan to refer patients, particularly those needing specialty care, to military medical treatment facilities (MTFs) in order to ensure that military health care providers maintain clinical currency and proficiency in their professional fields. The objective of better care is enhanced by a number of improvements in beneficiary access to health care services, including increased geographical coverage for the TRICARE Select provider network, reduced administrative hurdles for TRICARE Prime enrollees to obtain urgent care services and specialty care referrals, and promotion of high value services and medications. The goal of better health is advanced by expanding TRICARE coverage of preventive care services, treatment of obesity, high-value care, and telehealth. Finally, the aim of lower cost is furthered by refining cost-benefit assessments for TRICARE plan specifications that remain under DoD’s discretion and adding flexibilities to incentivize high-value health care services.

II. Public Comments

The IFR regarding the establishment of TRICARE Select and other TRICARE reforms was published in the **Federal Register** on September 29, 2017. Online comments were received from eighty-nine individuals, medical affiliated organizations, and military and veterans associations via www.regulations.gov. We sincerely appreciated all comments. Specific matters raised by those comments are summarized below. We have carefully considered all public comments. Except as noted below, we reaffirm the policies and procedures incorporated in the IFR and incorporate the rationale presented in the preamble of the IFR into this final rule.

A. Establishment of TRICARE Select

1. Provisions of Interim Final Rule

The rule implements the new law (section 701 of NDAA–17) that establishes TRICARE Select as a self-managed, PPO program. It allows TRICARE Select beneficiaries to use the TRICARE civilian provider network, with fixed copayments for most outpatient services compared to care from non-network providers, as well as MTFs when space is available. Similar to the long operating “TRICARE Extra” and “TRICARE Standard” plans, which TRICARE Select replaces, a major feature is that enrollees will not have restrictions on their freedom of choice with respect to health care providers. TRICARE Select is based primarily on 10 U.S.C. 1075 (as added by section 701 of NDAA–17) and 10 U.S.C. 1097. With respect to beneficiary cost sharing, the statute introduces a new split of beneficiaries into two groups: One group (which the rule refers to as “Group A”) consists of sponsors and their family members who first became affiliated with the military through enlistment or appointment before January 1, 2018, and the second group (referred to as “Group B”) who first became affiliated on or after January 1, 2018. In general, TRICARE Select beneficiary total out of pocket costs (taking into account enrollment fees and copayments) for Group B are higher than for Group A.

In addition to implementing the statutory specifications, the final rule also makes improvements for TRICARE Select Group A enrollees, compared to the features of the former TRICARE Extra plan. One such improvement is to convert the current cost-sharing requirement of 15% for active duty family members and 20% for retirees and their family members of the allowable charge for care from a network provider to a fixed dollar

copayment calculated to approximately equal 15% or 20% of the average allowable charge for the category of care involved. Consistent with prevailing private sector health program practices, the fixed dollar copayment is more predictable for the patient and easier for the network health care provider to administer. The breakdown of categories of care (such as outpatient primary care visit, specialty care visit, emergency room visit, etc.) contained in the rule is the same as the categories now specified in the statute for Group B Select enrollees.

A second improvement in TRICARE Select (for both Group A and Group B) is additional preventive care services that previously were only offered to TRICARE Prime beneficiaries will now (under the authority of 10 U.S.C. 1097 and NDAA–17) also be covered for TRICARE Select enrollees when furnished by a network health care provider. These are services recommended by the United States Preventive Services Task Force and the Health Resources and Services Administration of the Department of Health and Human Services.

These improvements are based partly on the statutory provision (10 U.S.C. 1075(c)(2)) that Group A Select enrollee cost-sharing requirements are calculated as if TRICARE Extra were still being carried out by DoD. TRICARE Extra specifications are based on the underlying authority of 10 U.S.C. 1097, which allows DoD to adopt special rules for the PPO plan. This statute was the basis for the original set of rules for TRICARE Extra, which were adopted in 1995, and is the authority for these improved rules for TRICARE Select Group A, adopted as if TRICARE Extra were still being carried out by DoD.

Under the IFR, the cost sharing rules applicable to TRICARE Select Group B are those specified in 10 U.S.C. 1075. For TRICARE Select Group A, in addition to the copayment rules noted above, consistent with 10 U.S.C. 1075, an enrollment fee of \$150 per person or \$300 per family will begin January 1, 2021, for most retiree families, with annual updates thereafter based on the cost of living adjustment (COLA) applied to retired pay. At the same time, the catastrophic cap will increase from \$3,000 to \$3,500 for these retiree families. These changes, however, will not apply to TRICARE Select Group A active duty families, survivors of members who died while on active duty, or disability retiree families; that is, no enrollment fee will be applicable to this group and the applicable catastrophic cap will continue to be \$1,000 for active duty families as

established under 10 U.S.C. 1079(b) and \$3,000 for survivors of members who died while on active duty or disability retiree families as established under 10 U.S.C. 1086(b).

2. Analysis of Major Public Comments

The Department received multiple comments expressing dissatisfaction with the TRICARE Select cost sharing, grandfathering, higher catastrophic caps, and how the increased fees were calculated. Many comments generally noted that fixed rates create a barrier to healthcare. It was expressed that service members and their families were promised free health care and that promise has been broken.

Response: We recognize the TRICARE Select cost shares and enrollment fees are higher than many expected. First, for Group B beneficiaries, the newly enacted out of pocket expenses are fixed by law (10 U.S.C. 1075), and the Department has implemented them without any modification.

Second, since the start of the TRICARE program in 1995, we've understood many people enroll in TRICARE Prime not because of a great desire to have their care managed by a primary care manager (PCM) or desire to undergo a referral and authorization process before receiving specialty care, but because of the simplicity of a known fixed copayment amount when seen by a network provider for care. This allows families to budget for their out-of-pocket costs versus paying a percentage of an unknown amount to be billed by the provider. We thought those not enrolled in TRICARE Prime would welcome this simplicity as well and do not perceive that a barrier to healthcare is created by establishing a fixed copayment that is generally comparable to an alternative specified percentage of allowable amounts for similar services. Therefore, because Congress mandated in NDAA–17 that TRICARE Select Group B beneficiaries have fixed copayment amounts for network care, the Department used existing authorities to calculate, to the extent practicable, TRICARE Select fixed copayments for network care also for Group A enrollees. When determined not to be practicable, as in the categories of inpatient admissions and inpatient skilled nursing/rehabilitation admissions, the calculated cost-sharing amounts are not converted to fixed dollar amounts.

While our goal is to provide at least 85% of TRICARE Select enrollees access to network providers, including those in non-PSAs, those using non-network providers will pay the same non-fixed cost shares (*i.e.*, percentage of allowed amounts), whether they are in Group A

or B, the same as if they still had TRICARE Standard/Extra cost shares (a percentage of the Government allowed amount after satisfying the annual deductible amount).

According to law, on average, out-of-pocket expenses for Group A are not to be any more than what they would have been had we continued the previous TRICARE Standard/Extra cost shares (a percentage of the Government allowed amount). Similar to the copayment for TRICARE Prime, our HMO option, the TRICARE Select calculated copayment amounts do not have separate copayments for ancillary services such as laboratory or radiology associated with the encounter, or for the facility charge if the encounter is in a facility, e.g., a hospital outpatient department. Although some concern was expressed that the inclusion of ancillary services in calculating the fixed copayment for the basic service resulted in a higher fixed copayment than existed under TRICARE Standard/Extra, the slight increase in the calculated copay accounts for separate copayments under TRICARE Standard/Extra for both the basic service and the ancillary service. Now, when a TRICARE Select enrollee pays a copayment for an office visit, any ancillary or facility charges would be part of that fixed copayment amount and no other out of pocket expense is incurred by the beneficiary. Having carefully considered this issue, our conclusion is that the advantages of having a predictable, fixed copayment amount under both TRICARE Prime and TRICARE Select outweigh the concerns about including the ancillary services in the calculation.

Commenters also objected in general to TRICARE out of pocket cost increases, stating they were promised either free health care for life or objected to any future increases in their out of pocket expenses. We gratefully acknowledge the contributions to our Nation by those who have served in uniform as well as their family members. However, as a percentage of total health care costs, the beneficiary's cost share is substantially lower today than when the TRICARE program began more than 20 years ago. Additionally, while beneficiary desires and expectations are understandable, neither the law nor DoD policy ever promised free health care or the availability of TRICARE Prime in all areas. It can be fairly said that they have been promised a very good health care program, and in the context of health plans across the United States, this promise has been kept.

3. Provisions of the Final Rule: The final rule is consistent with the IFR.

B. Continuation of TRICARE Prime

1. Provisions of the Interim Final Rule

A second major feature of the IFR, primarily based on 10 U.S.C. 1075a (also added by section 701 of NDAA–17), is the continuation of TRICARE Prime as a managed care, HMO-like program. It generally features use of MTFs and substantially reduced out-of-pocket costs for authorized care provided outside MTFs. Beneficiaries generally agree to use MTFs and designated civilian provider networks and to follow certain managed care rules and procedures. Like TRICARE Select, with respect to beneficiary cost sharing, the statute introduces a new split of beneficiaries into two groups (again referred to in the rule as Group A and Group B) based on the military sponsor's initial enlistment or appointment before January 1, 2018 (Group A), or on or after that date (Group B). Section 1075a mandated fixed copayments for specific categories of care received by Group B beneficiaries. However, Section 1075a only directed that the copayments for Group A should be calculated in accordance with other authority granted to the Department. At the time of issuance of the IFR, the copayments for Group A had not been calculated but it specified that Group A cost sharing could not exceed the amount for each category of care set for Group B in Section 1075a. The Department continued to have the authority to set the TRICARE Prime Group A copayments, and they were set to match those of the Group B TRICARE Prime enrollees mandated by law. As such, TRICARE Prime copayments for both Group A and Group B enrollees are the same. It's important to note active duty family members (Group A or B) enrolled in TRICARE Prime continue to enjoy a \$0 out of pocket expense when authorized care is rendered by a TRICARE network provider.

2. Analysis of Major Public Comments

The government received many comments expressing dissatisfaction with the authority, interpretation and methodology for copayment rates for grandfathered (Group A) beneficiaries. Among the comments was that Congress intended no change for grandfathered beneficiaries.

Response: With the addition of 10 U.S.C. 1075a by NDAA–17, Congress established specific out of pocket expenses for Group B beneficiaries enrolled in TRICARE Prime as of January 1, 2018. In addition to a difference in the amount of the copayments, Congress also created

additional categories of visits for Group B enrollees. With respect to Group A beneficiaries enrolled in TRICARE Prime, Congress did not specify copayment amounts but rather directed the Department to calculate cost-sharing requirements under other existing authorities.

The IFR adopted for Group A beneficiaries enrolled in TRICARE Prime the same structure of categories of care that Congress adopted for Group B. In addition, it provided an overview of the authority and discretion of the Department for calculating the actual amount to be established as Group A cost sharing for each category of care. Consistent with that discretion under current statute and regulation, the Department determined the cost sharing for each category of care for Group A shall be the same amount as required for Group B under Section 1075a. The establishment of consistent copayments for all TRICARE Prime enrollees contributes to the effective and efficient administration of TRICARE, removes complexities in network provider billing for Prime enrollees, and simplifies the communication of program information to the public. In addition, it has been determined that the slight increase in fixed copayments for Group A are a reasonable and fair amount considering the overall rise in health care costs since initial establishment of the outpatient visit copayment first at \$12 over twenty-three years ago in 1995. In addition, as noted in the preamble to the IFR, TRICARE Prime copays were originally intended to be updated every year or so to maintain "cost neutrality" compared to the TRICARE Standard program. But as things worked out, this is the first update in more than 20 years.

The Department is proud that TRICARE remains one of the most comprehensive health benefits available in this country at exceptionally low beneficiary cost—a benefit that is commensurate with the sacrifice of those whom it serves.

3. Provisions of the Final Rule: The final rule is consistent with the IFR.

C. Improved Access to Care

1. Provisions of the Interim Final Rule

A third significant change in the IFR is a set of improvements in standards for access to care. The TRICARE Select plan replaces TRICARE Standard as the generally available plan worldwide. Under TRICARE Select, enrolled beneficiaries can choose any TRICARE authorized provider for their healthcare, and they will enjoy known out of pocket costs if they choose providers within the TRICARE civilian network. The vast

majority of TRICARE beneficiaries located in the United States will have access to TRICARE network providers (it is DoD's plan that at least 85% of the U.S. beneficiary population enrolled in TRICARE Select will have access to a preferred provider network upon implementation), similar to the old TRICARE Extra option, but with the benefit of predictable fixed dollar copayments. In cases in which a network provider is not available to a TRICARE Select enrollee, such as in remote locations where there are very few primary or specialty providers, enrollees will still have access to any TRICARE authorized provider, with cost sharing comparable to the old TRICARE Standard plan (*i.e.*, 25% for retired category beneficiaries).

A second IFR enhancement for access to care is that if a TRICARE Prime enrollee seeks to obtain an appointment for care from the managed care support contractor but is not offered an appointment within the applicable access time standards from a network provider, the enrollee will be authorized to receive care from any TRICARE authorized provider without incurring the additional fees associated with point-of-service care.

A third access to care improvement under the IFR is that the TRICARE Prime referral requirement may be waived for urgent care visits for Prime enrollees other than active duty members. This is similar to the former pilot program, which waived the referral requirement (other than for active duty members) for up to two urgent care visits per year. The specific number of urgent care visits without a referral will be determined annually prior to the beginning of the open season enrollment period. During plan year 2018, there is no limit to the number of urgent care visits that a Prime beneficiary (other than an active duty member) may receive without a referral from a PCM. The Department has no current plans to change that, but in order to evaluate the ongoing appropriateness of this policy, it remains a year-by-year determination.

A fourth access to care improvement is adoption of the new statutory provision that a PCM who believes a referral to a specialty care network provider for outpatient care is medically necessary and appropriate need not obtain preauthorization from the TRICARE regional contractor. TRICARE regional contractor preauthorization is only required in this particular context with respect to a PCM's referral for inpatient hospitalization, inpatient care at a skilled nursing facility, inpatient care at a residential treatment center, or inpatient care at a rehabilitation facility.

It is important to note that the removal of the need for TRICARE Prime PCMs to get managed care support contractor preauthorization approval for referral to specialty care in NDAA-17 Section 701(c) [amending 10 U.S.C. 1095f] applies to the specialty consult itself but does not serve to preauthorize specific treatments, tests, or procedures that may be indicated by such consult. In other words, the treatment-specific preauthorization requirements separately set forth in the TRICARE Manuals still apply across the board. That change also applies only to referrals by a PCM to other network providers or within the network for covered services. Any referral to non-network specialty providers or services is not exempt from the preauthorization requirements. It is essential that the NDAA language concerning PCM referrals not be taken out of context and read too broadly—that language does not affect the longstanding and separate preauthorization requirements that apply to certain treatments/services/equipment generally.

To explain further, Section 701 restrictions on prior authorizations (*i.e.*, 10 U.S.C. 1095f(b) and (c)) only apply to TRICARE Prime enrollees. Thus, the IFR states in § 199.17(i): “All quality assurance, utilization review, and preauthorization requirements for the basic CHAMPUS program, as set forth in this part (see especially applicable provisions in §§ 199.4 and 199.15), are applicable to Prime and Select except as provided in this chapter.” The preauthorization requirements that are generally applicable under TRICARE independent of TRICARE Prime referrals, including those under the Pharmacy Benefits Program (under 10 U.S.C. 1074g and § 199.21), certain laboratory and other ancillary services, and durable medical equipment.

Therefore, TRICARE Select enrollees are also subject to all TRICARE Basic program preauthorization requirements even if the TRICARE Select enrollee seeks specialty care from a network provider. In sum, the preauthorization and referral requirements under TRICARE are an integral part of the program, were not entirely removed by NDAA-17, and can be complex in certain circumstances.

2. Analysis of Major Public Comments

The government received many comments regarding the improved access to care and urgent care policy. Comments were received from beneficiaries who do not live near active military installations and expressed concerns about finding TRICARE authorized providers in their area or

being discriminated against because the TRICARE Prime HMO option is not offered where they live. Other general concerns were expressed regarding inability to get timely scheduled appointments at MTFs. However, overall, comments were favorable about allowing unregulated urgent care visits.

Response: As to the issue of beneficiaries who do not live near military installations not being able to find TRICARE authorized providers, we believe those who enroll in TRICARE Select will have better access to care from network providers than previous TRICARE Standard beneficiaries. It is the Department's plan that the TRICARE contractors offer improved access to ensure that at least 85% of TRICARE Select enrollees in each region in the U.S. have access to networks of providers near where they live. Therefore, for the majority of TRICARE Select enrollees, they will enjoy access to network providers that will charge no more than the established TRICARE copayment or cost share and will file claims on their behalf. Otherwise, TRICARE Select enrollees who do not live near an established network of preferred providers may use any TRICARE authorized provider. Finally, as a self-managed plan, TRICARE Select enrollees may elect to seek care from any TRICARE authorized provider, whether network or network, and also enjoy space available care at military hospitals and clinics. Therefore, TRICARE Select enrollees will generally have greater access to care but in no case less access than TRICARE Standard beneficiaries have always enjoyed.

Several commenters claimed the Department discriminates against them because it does not offer the TRICARE Prime (HMO-like) option as they do not live near an active military installation. As noted in the IFR, the locations where TRICARE Prime will be offered will be determined by the Director, Defense Health Agency (DHA) and announced prior to the annual open season enrollment period. The final rule continues our principle that the purpose of TRICARE Prime is to support the medical readiness of the armed forces and the readiness of medical personnel in areas of one or more MTFs. The rule preserves the Department's discretion with respect to the locations where TRICARE Prime is offered.

As concerns the issue of timely appointments at MTFs, we are diligently working to improve beneficiary access and satisfaction with care at MTFs and to address the concerns raised with MTF same day care and scheduling MTF appointments. Regarding concerns about the quality of MTF care, all MTFs

have avenues to address concerns from patients, and we urge beneficiaries to utilize the services of the Customer Service and/or Quality Officers to address specific health care concerns.

With respect to access to care standards for TRICARE Select enrollees, we did not specifically highlight this issue in the IFR because there was more focus on TRICARE Prime access standards. But the provisions of the IFR regarding the size, composition, and mix of providers being adequate to meet the needs of the enrolled population served apply to both TRICARE Prime and TRICARE Select enrollees. Because TRICARE Select is a self-managed plan where enrollees may choose to get care when and where they wish with no referrals, there are some differences between the TRICARE Prime and TRICARE Select plans regarding how those standards are implemented. But the access standards regarding availability of routine primary care, specialty care, urgent care, and emergency services are the same. As a means of monitoring implementation for TRICARE Select enrollees, their satisfaction with access to care will be surveyed and compared with those of high-performing health care systems in the United States.

4. *Provisions of the Final Rule:* The final rule is consistent with the IFR.

D. Promotion of High Value Services and Medications and Telehealth Services

1. Provisions of the Interim Final Rule

The IFR made a number of other improvements in TRICARE Prime and TRICARE Select based on provisions of sections 701(h), 706, 718, and 729 of NDAA-17. These involved high value services and medications, population-based health outcomes and focus more on preventive care, medical intervention programs, to address chronic diseases and other conditions and healthy lifestyle interventions, and telehealth services.

The IFR authorizes coverage under TRICARE Prime and TRICARE Select for medically necessary treatment by a network provider of obesity even if it is the sole or major condition treated.

2. Analysis of Major Public Comments

The Department received several comments expressing dissatisfaction with how the Department plans to implement coverage for medically necessary treatment of obesity, even if it is the sole of major condition treated. Registered Dietitian Nutritionists (RDNs) recommended that the provision more specifically include RDNs in the

treating of obesity as RDNs are experts in food and nutrition and may be more knowledgeable than other health practitioners in treating this nutrition-related disease through diet and behavior modification.

Response: Regarding the comment about a RDN's role in the treatment of obesity, the TRICARE regulation recognizes Registered Dietitians and Nutritionists as TRICARE authorized providers if they meet the required professional training and licensing requirements. If the otherwise qualified RDN provides medically necessary services in the treatment of obesity for an eligible beneficiary while under the supervision of a physician, the services will be covered as a TRICARE benefit. Nothing is required to be added by the final rule to authorize RDN services in the treatment of obesity.

3. *Provisions of the Final Rule:* The final rule is consistent with the interim final rule.

E. Changes to Health Plan Enrollment System

1. Provisions of the Interim Final Rule

A fourth major change in the IFR is the implementation of the new statutory design for the health care enrollment system. Starting in calendar year 2018, beneficiaries other than active duty members and TRICARE-for-Life beneficiaries must elect to enroll in TRICARE Select or TRICARE Prime in order to be covered by the private sector care portion of TRICARE. While TRICARE-for-Life beneficiaries under the age of 65 are permitted to enroll in TRICARE Prime under limited circumstances, their failure to enroll will not affect their coverage by the private sector care portion of TRICARE. Enrollment will be done during an open season period prior to the beginning of each plan year, which operates with the calendar year. An enrollment choice will be effective for the plan year. As an exception to the open season enrollment rule, enrollment changes can be made during the plan year for certain qualifying events, such as a change in eligibility status, marriage, divorce, birth of a new family member, relocation, loss of other health insurance, or other events.

Eligible Prime or Select beneficiaries who do not enroll will no longer have private sector care coverage under the TRICARE program (including the TRICARE retail pharmacy and mail order pharmacy programs) until the next open enrollment season or they have a qualifying event except that they do not lose any statutory eligibility for space-available care in military medical

treatment facilities. There is a limited grace period exception to this enrollment requirement for calendar year 2018, as provided in section 701(d)(3) of NDAA-17, to give beneficiaries another chance to adjust to this new requirement for annual enrollment. For the administrative convenience of beneficiaries, there are also procedures for automatic enrollment in TRICARE Prime or TRICARE Select for most active duty family members, and automatic renewal of enrollments of covered beneficiaries, subject to the opportunity to decline or cancel.

Due to a compressed implementation schedule that precluded an annual open season enrollment period in calendar year 2017 for existing TRICARE beneficiaries to elect or change their TRICARE coverage, the Department converted existing TRICARE Standard coverage to TRICARE Select coverage effective January 1, 2018. All other existing TRICARE coverages were renewed effective January 1, 2018. As noted previously, beneficiaries may elect to change their TRICARE coverage anytime during the limited grace period in calendar year 2018.

2. Analysis of Major Public Comments

We received one public comment regarding the enrollment changes and open enrollment times. Instead of having to enroll in a TRICARE health plan, eligible beneficiaries simply would show their military identification card to any civilian provider, and then TRICARE would reimburse the provider. Or alternatively, the federal government should pay for the most expensive, lowest deductible plan offered by any insurance company, and charge retirees a reasonable percentage of the costs.

Response: Neither suggestion is feasible. First, the law requires a TRICARE enrollment system, with specified enrollment fees, for all TRICARE eligible beneficiaries except for TRICARE-for-Life beneficiaries (*i.e.*, those eligible for the Medicare wraparound coverage under 10 U.S.C. 1086(d)) and beneficiaries accessing space available care at MTFs. Under the required enrollment system, an eligible beneficiary is required to elect which option—TRICARE Prime or Select—to enroll in in order to be covered under the private sector health care benefit program. So, the proposed alternative is not consistent with the requirements of law. Second, the alternative of allowing the government to purchase a commercial insurance plan for beneficiaries also is not envisioned under the law. The law mandates

TRICARE as the program, as administered through the TRICARE regulation, by which authorized beneficiaries obtain DoD coverage on their civilian health care claims.

3. *Provisions of the Final Rule:* The final rule is consistent with the IFR.

F. Additional Provisions of the Interim Final Rule

1. Provisions of the Interim Final Rule

The IFR has several other noteworthy provisions. These included the continuation of benefits for TRICARE-for-Life beneficiaries, cost sharing levels for active duty family members, and TRICARE basic program benefits. Additionally, NDAA–17, section 701 directed Prime and Select beneficiary cost sharing be on a calendar year basis. In addition, a technical amendment enacted in NDAA–18, section 739(d), similarly directed that cost sharing of civilian health care by other beneficiaries also be on a calendar year basis.

The IFR adopted several changes to regulatory provisions applicable to the TRICARE Young Adult, TRICARE Reserve Select, TRICARE Retired Reserve, and TRICARE dental coverage.

Also, the IFR adopted several changes to regulatory provisions applicable to benefit coverage of medically necessary food and vitamins. Section 714 of NDAA–17 confirms long-standing TRICARE policy authorizing benefit coverage of medically necessary vitamins when prescribed for management of a covered disease or condition. In addition, while section 714 confirms long-standing TRICARE policy authorizing medical nutritional therapy coverage of medically necessary food and medical equipment/supplies necessary to administer such food when prescribed for dietary management of a covered disease or condition, the law also allows the medically necessary food benefit to include coverage of low protein modified foods. Consistent with this we also recognize the role of Nutritionists and Registered Dieticians in the appropriate planning for the use of medically necessary foods.

2. Analysis of Major Public Comments

Regarding changes to the regulation provisions on medically necessary food, we received two comments from national medical associations that suggested that the statute covers “partial or exclusive” feeding while TRICARE policy issuance implementing the regulation continues to only cover foods that provide “primary source” of calories. Also, one commenter challenged the exclusion of over-the-

counter formula that don’t need prescriptions arguing that the language of the statute allows medical foods furnished “pursuant to prescription, order, or recommendation (as applicable)” of a qualified provider.

Response: The TRICARE Medically Necessary Food policy (TRICARE Policy Manual, Chapter 8, Section 7.2), as revised in implementation of the IFR, allows coverage of specifically formulated and processed food for the partial or exclusive feeding of an individual. Regarding the issue of over-the-counter formula, we note that the rule language is consistent with the statutory language in that one of the criteria for coverage of medically necessary food is a prescription, order, or recommendation of a TRICARE authorized provider. No revision in the final rule is required. However, the specific issue of coverage of over-the-counter formula will be further reviewed to ensure TRICARE policy implementing the rule provides reasonable access to formula when qualifying as medically necessary food.

As noted, the IFR adopted several conforming changes to regulatory provisions applicable to general TRICARE administration reflecting transition from program administration on a fiscal year to a calendar year basis and creating a program plan year for enrollment and benefit coverage on a calendar year basis. Further review has identified the need to provide flexibility in the updating of certain prospective payment methodologies to more closely correspond with the pertinent program plan benefit year. In that regard, the IFR will be revised in the final rule to provide such flexibility in § 199.14(a)(1)(i)(D) for the update of the TRICARE Diagnostic Related Group (DRG) system.

3. *Provisions of the Final Rule:* The final rule is consistent with the interim final rule except for revision of the TRICARE DRG system updates in § 199.14(a)(1)(i)(D) transitioning such updates to the TRICARE program plan year.

G. Cost Sharing Tables

1. Provisions of the Interim Final Rule:

The preamble to the IFR included tables recapping the new cost sharing requirements for beneficiaries as outlined in the summary of provisions of the IFR as the rates specifically related to calendar year 2018. At the time, the tables were incomplete in that certain requirements had not yet been determined. In addition, notice was given that all fees are subject to review and annual updating for future calendar

years in accordance with law. The final rates for calendar year 2018 were published in the **Federal Register** on January 5, 2018, including the two official recap tables as Appendix A. The official tables are also available at www.health.mil/rates. In future years, a summary of changes in the TRICARE program (including updated rates) will be published in connection with the open season enrollment period. In view of the public notice of the official rates for calendar year 2018 and their availability on the www.health.mil/rate website, the recap tables are not included as background information for this final rule.

In addition, notice was given that all fees are subject to review and annual updating for future calendar years in accordance with law. Consistent with our previous implementation of law applicable to TRICARE Prime, we will utilize the overall annual COLA percentage increase under 10 U.S.C. 1401a(b)(2) when necessary to update the fixed dollar amounts in the tables for TRICARE Prime and TRICARE Select beginning calendar year 2019. This will permit maintaining uniform rates to facilitate efficiency and effectiveness in program administration.

2. *Provisions of the Final Rule:* The final rule is consistent with the IFR.

H. Comments Submitted Beyond Scope of Interim Final Rule

We received three comments that were beyond the scope of the IFR which included; opioid overdoses, dual basic allowance for housing for members in the same residence, and chiropractic benefits. Though not addressed in the final rule, these comments will be reviewed for action by appropriate DoD subject matter experts.

III. Changes Made to the Rule To Implement Provisions of the NDAA–18

Certain provisions of the NDAA–18 amended or provided technical corrections to the provisions of the NDAA–17. Necessary revisions in the final rule based on these provisions are included to the extent the Department has no administrative discretion. The following provisions of NDAA–18 are noted.

(1) Section 701(a) and (b) of NDAA–18 amended 10 U.S.C. 1076d (TRS) and 1076e (TRR), respectively, to correct the unintentional deletion of space available access to care to MTFs by TRS and TRR enrollees. Section 199.24(a)(4)(iv) for TRS and § 199.25(a)(4)(iv) for TRR already include provisions for space available care at MTFs, when authorized, for

enrollees. Therefore, no regulatory change is needed.

(2) Section 739(a) of NDAA–18 amended the definition of “TRICARE Standard” in 10 U.S.C. 1072(15) to correct the statutory authorities of “TRICARE Standard” to be section 1079(a) or 1086(a) of this title. The definition otherwise remains intact. The final rule makes a conforming change to the regulatory definition of “TRICARE Standard.”

(3) Section 739(b)(1)(A) of NDAA–18 amended 10 U.S.C. 1075(d) by adding at the end a new paragraph pertaining to TRICARE Select, providing that the cost-sharing requirements applicable to services not specifically addressed in the statute shall be established by the Secretary. The final rule (section 199.17(1)(1)(ii)) makes a conforming change to the regulation.

(4) Section 739(b)(1)(B) of NDAA–18 amended 10 U.S.C. 1075(d)(1) in the first column of the table pertaining to TRICARE Select cost sharing amounts by striking out: “Ambulance civilian network” and inserting “Ground ambulance civilian network.” Section 199.17(k)(2)(vi) included the Department’s interpretation and implementation of the law as applying to ground ambulance services. NDAA–18 merely supports that interpretation. Therefore, no regulatory change is needed.

(5) Section 739(b)(2)(A) of NDAA–18 amended 10 U.S.C. 1075a(b) by adding a new paragraph providing that the cost-sharing requirements applicable to services not specifically addressed in the table set forth in the statute shall be established by the Secretary. We are making a conforming change to the regulation (§ 199.17(1)(2)(ii)).

(6) Section 739(b)(2)(B) of NDAA–18 amended 10 U.S.C. 1075a(b)(1) in the first column of the table pertaining to TRICARE Prime cost sharing amounts by striking out “Ambulance civilian network” and inserting “Ground ambulance civilian network.” Section 199.17(k)(2)(vi) included the Department’s interpretation and implementation of the law as applying to ground ambulance services. NDAA–18 merely supports that interpretation. Therefore, no regulatory change is needed.

(7) Section 739(d)(1) and (2) of NDAA–18 amended 10 U.S.C. 1079(b) and 1086(b) respectively to reflect transition of deductibles, catastrophic caps, and program reimbursement limitations, as applicable, from fiscal year to calendar year for TRICARE beneficiaries not otherwise covered under the TRICARE Prime and Select programs. The IFR included this

transition for consistency and ease of general TRICARE administration. The NDAA–18 amendments reflect congressional agreement through codification of the transition. Therefore, no regulatory change is needed.

(8) Section 739(e) of NDAA–18 amended 10 U.S.C. 1095f(b) by adding a new paragraph requiring TRICARE Prime enrollees to obtain preauthorization with respect to a referral for inpatient care at a residential treatment facility. Section 199.17(n)(2)(iv)(D) already included this language. Therefore, no regulatory change is needed.

(9) Section 739(f) of NDAA–18 amended 10 U.S.C. 1110b(c)(1) to clarify that an eligible beneficiary who enrolls in the TRICARE Young Adult (TYA) program will pay the TYA premium in lieu of either the otherwise applicable TRICARE Prime or Select premium. Section 199.26(a)(4)(ii) included the clarification regarding the applicable premium for a TRICARE Young Adult enrollee based on any option to purchase TRICARE Prime or Select program coverage. Therefore, no regulatory change is needed.

IV. Technical Corrections to the Interim Final Rule

The following technical corrections are being made to the IFR by the final rule.

(1) In § 199.17(f)(4), the reference to “paragraph (f)(5)” is revised to read “paragraph (f)(4).”

(2) In § 199.17(n)(2)(vi), the reference to “paragraph (l)(1)(iv)” is revised to read “paragraph (l)(1)(iii).”

V. Regulatory Procedures

Executive Order (E.O.) 13771, “Reducing Regulation and Controlling Regulatory Costs”

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulation and to reduce regulations that impose such costs. This rule does not include government imposition of private expenditures required to comply with Federal regulation or requires regulations that impose such costs. Therefore, consistent with the analysis of transfer payments under OMB Circular A–4, this final rule does not involve regulatory costs subject to E.O. 13771.

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and

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

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act (CRA), a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more or have certain other impacts. The final rule is not a major rule under the CRA.

Public Law 96–354, “Regulatory Flexibility Act” (RFA), (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency analyze options for regulatory relief of small business if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This final rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

Public Law 104–4, Sec. 202, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any

rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140 million. This final rule will not mandate any requirements for state, local, or tribal governments or the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This rulemaking does not contain a "collection of information" requirement, and will not impose additional information collection requirements on the public under Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

Executive Order 13132, "Federalism"

This final rule has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Mental health, Mental health parity, Military personnel.

Accordingly, the interim final rule amending 32 CFR part 199 which was published at 82 FR 45438-45461 on September 29, 2017 is adopted as a final rule with the following changes:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2 is amended in paragraph (b) by revising the definition of "TRICARE Standard" to read as follows:

§ 199.2 Definitions.

(b) * * *

TRICARE Standard. The TRICARE program made available prior to January 1, 2018, covering health benefits contracted for under the authority of 10 U.S.C. section 1079(a) or 1086(a) and subject to the same rates and conditions as apply to persons covered under those sections.

* * * * *

3. Section 199.14 is amended by revising paragraph (a)(1)(i)(D) to read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *
(1) * * *
(i) * * *

(D) DRG system updates. The CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and uses annually updated items and numbers from the Medicare PPS as provided for in this part and in instructions issued by the Director, DHA. The effective date of these items and numbers shall not correspond to that under Medicare PPS but shall be delayed until January 1, to align with TRICARE's program year reporting. This allows for an administrative simplicity that optimizes healthcare delivery by reducing existing administrative burden and costs.

* * * * *

4. Section 199.17 is amended by revising paragraphs (f)(4), (l)(1)(ii), (1)(2)(ii), and (n)(2)(vi) to read as follows:

§ 199.17 TRICARE program.

(f) * * *

(4) High value services. Under the authority of 10 U.S.C. 1097 and other authority, including sections 706 and 729 of the NDAA-17, for purposes of improving population-based health outcomes and incentivizing medical intervention programs to address chronic diseases and other conditions and healthy lifestyle interventions, the Director may waive or reduce cost sharing requirements for TRICARE Prime and TRICARE Select enrollees for care received from network providers for certain health care services designated for this purpose. The specific services designated for this purpose will be those the Director determines provide especially high value in terms of better health outcomes. The specific services affected for any plan year will be announced by the Director prior to the open season enrollment period for that plan year. Services affected by actions of the Director under this paragraph (f)(4) may be associated with actions taken for high value medications under § 199.21(j)(3) for select pharmaceutical agents to be cost-shared at a reduced or zero dollar rate.

* * * * *

(l) * * *
(1) * * *

(ii) For Group B TRICARE Prime enrollees, the enrollment fee, catastrophic cap, and cost sharing

amounts are as set forth in 10 U.S.C. 1075a. The cost sharing requirements applicable to services not specifically addressed in the table set forth in 10 U.S.C. 1075a(b)(1) shall be determined by the Director, DHA.

* * * * *

(2) * * *

(ii) For Group B TRICARE Select enrollees, the enrollment fee, annual deductible for services received while in an outpatient status, catastrophic cap., and cost sharing amounts are as provided in 10 U.S.C. 1075 and as consistent with this section. The cost sharing requirements applicable to services not specifically addressed in 10 U.S.C. 1075 shall be determined by the Director, DHA.

* * * * *

(n) * * *
(2) * * *

(vi) The cost-sharing requirement for a beneficiary enrolled in TRICARE Prime who does not obtain a referral for care when it is required, including care from a non-network provider, is as provided in paragraph (l)(1)(iii) of this section concerning point of service care.

* * * * *

Dated: February 12, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-02532 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1011]

RIN 1625-AA00

Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Washington Channel adjacent to The Wharf DC, Washington, DC, for recurring fireworks displays from January 12, 2019, through December 31, 2019. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port

Maryland-National Capital Region or a designated representative.

DATES: This deviation is effective without actual notice from February 15, 2019 through December 31, 2019. For the purposes of enforcement, actual notice will be used from January 12, 2019, until February 15, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1011 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
 COTP Captain of the Port
 DHS Department of Homeland Security
 FR Federal Register
 NPRM Notice of proposed rulemaking
 § Section
 U.S.C. United States Code

II. Background Information and Regulatory History

On October 30, 2018, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting fireworks displays, sponsored by The Wharf DC, from 7 p.m. to 11:59 p.m. for various events from January 12, 2019, through December 31, 2019. The fireworks are to be launched from a barge in the Washington Channel, adjacent to The Wharf DC in Washington, DC. In response, on November 14, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC" (83 FR 56768). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 14, 2018, we received 29 comments.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) Maryland-NCR has determined that potential hazards associated with the fireworks to be used in these displays will be a safety concern for anyone within a 200-foot radius of the fireworks barge. This rule is needed to ensure safety of vessels on the navigable waters within 200 feet of the fireworks barge on the Washington Channel before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 29 public submissions to the docket responding to our NPRM published November 14, 2018. We thank all of the commenters for taking time to review the NPRM and submit comments regarding this action.

The majority of commenters expressed support for the rule but there were four issues presented.

The size of the safety zone is not effective and should be increased for public safety purposes.

The minimum safe distance from the fireworks barge used by the Coast Guard to determine the size of the safety zone is based on industry standards for outdoor aerial fireworks set by the National Fire Protection Association (NFPA). The NFPA standard for this fireworks display is 140 feet from the discharge site. At the request of the contracted fireworks company, Pyrotecnico, the Coast Guard is using 200 feet for the size of its safety zone, which is an increase of approximately 40 percent above the safe distance set by the NFPA.

The duration of the enforcement of the zone, from 7 p.m. until 11:59 p.m., is excessive and doesn't agree with the duration of a typical fireworks show.

Although these fireworks shows are typically of short duration, not all of these fireworks displays will be scheduled to occur at the same time of the evening throughout the year. The actual enforcement period used for each of these fireworks events is expected to be two hours. In developing the length of the safety zone enforcement period of five hours, the Coast Guard has taken care to avoid imposing restrictions on waterway usage longer than what is justified to ensure the safety of the public.

A barrier or sign, and other methods of notice, should be used to separate the zone from the rest of the waterway and its users.

The following forms of notice will be provided for each fireworks display.

The fireworks barge that operates within the safety zone will have a sign affixed to the port and starboard side of the barge labeled "FIREWORKS—DANGER—STAY AWAY" to provide on-scene notice that the safety zone will be enforced on that day. Patrol vessels assigned by the COTP Maryland-National Capital Region will be present to monitor the fireworks display and enforce the safety zone. In addition, the COTP Maryland-National Capital Region will notify the public of the specific enforcement times of the safety zone by all appropriate means to affect the widest publicity among the affected segments of the public, including publishing a Notice of Enforcement in the **Federal Register** and an article in the Local Notice to Mariners. Broadcast Notice to Mariners will also be made for each of these events, to begin prior to that start of the scheduled event, and to continue to notify the public, until immediately after its completion.

Waterway users must be notified with ample time so that they have the ability to obtain the authorization required to transit the area of the safety zone.

Since the forms of notice stated previously will be provided in advance of each fireworks display, waterway users will have the time needed to request authorization to transit the area of the safety zone and make appropriate voyage plans.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone in the Washington Channel from January 12, 2019, through December 31, 2019. The safety zone will cover all navigable waters of the Washington Channel within 200 feet of the fireworks barge. For each event, the barge will be located within an area bounded on the south by latitude 38°52'30" W, and bounded on the north by the southern extent of the Francis Case (I-395) Memorial Bridge, located at Washington, DC. The safety zone will be enforced from 7 p.m. until 11:59 p.m. for each fireworks display scheduled from January 12, 2019, through December 31, 2019. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. Although vessel traffic will not be able to safely transit around this safety zone when being enforced, the impact would be for less than 5 hours during the evening when vessel traffic in Washington Channel is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be in effect for the entire year, however, when activated, lasting less than 5 hours that prohibits entry within a portion of the Washington Channel. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–1011 to read as follows:

§ 165.T05–1011 Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the

Washington Channel within 200 feet of the fireworks barge located within an area bounded on the south by latitude 38°52'30" W, and bounded on the north by the southern extent of the Francis Case (I-395) Memorial Bridge, located at Washington, DC. All coordinates refer to datum NAD 1983.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced January 12, 2019, through December 31, 2019, from 7 p.m. to 11:59 p.m. each day that a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard sides is on-scene or a "FIREWORKS—DANGER—STAY AWAY" sign is posted on land adjacent to the shoreline, near the location described in paragraph (a) of this section. The enforcement times of this section are subject to change, but the duration of each enforcement of the zone is expected to be 5 hours or less. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as issuing a Broadcast Notice to Mariners.

Dated: February 11, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019-02465 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 8, 14, 19, 20, and 21

RIN 2900-AQ26

VA Claims and Appeals Modernization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a final rule regarding its claims adjudication, appeals, and Rules of Practice of the Board of Veterans' Appeals (Board) regulations. This correction addresses minor technical errors in the published final rule.

DATES: Effective February 19, 2019.

FOR FURTHER INFORMATION CONTACT:

Veterans Benefits Administration information, Jennifer Williams, Senior Management and Program Analyst, Appeals Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 530-9124 (this is not a toll-free number). Board of Veterans' Appeals information, parts 19 and 20: Rachel Sauter, Counsel for Legislation, Regulations, and Policy, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Due to technical errors and dropped amendments in editing, VA is correcting its final rule, VA Claims and Appeals Modernization, that published January 18, 2019, in the **Federal Register** at 84 FR 138.

Corrections

In FR Rule Doc. No. 2018-28350, beginning on page 138 in the issue of January 18, 2019, make the following corrections.

1. On page 139, second column, third paragraph under "*B. Comments Concerning § 3.103—Procedural Due Process and Other Rights*," in last sentence (line 21), remove "to § 3.103(d)(2)".

2. On page 146, first column, in line 22, correct "§ 3.351(c)" to read "§ 3.151(c)", and in line 24, correct "administrative" to read "administrative".

3. On page 168, second column, correct instruction 8 to read as follows:

"8. In § 3.114, remove the word "reopened" and add in its place the word "supplemental"."

4. On page 169, first column, in the amendment to § 3.156, add introductory text, per instruction 11b, and correct the third sentence in paragraph (a) to read as follows:

§ 3.156 [Corrected]

New evidence is evidence not previously part of the actual record before agency adjudicators.

(a) * * * New evidence is evidence not previously part of the actual record before agency adjudicators. * * *

* * * * *

§ 3.2400 [Corrected]

■ 5. On page 171, second column, in paragraph (d) of added § 3.2400, add the word "only" between the words "applicable" and "to".

§ 3.2500 [Corrected]

■ 6. On page 171, third column, in paragraph (b) of added § 3.2500, add a period at the end of the first sentence ending with "option".

■ 7. On page 172, third column, correct instruction 31 and add text for revised paragraph (c) to read as follows:

■ 31. Amend § 3.2600 by revising the section heading, adding introductory text, revising paragraph (c), and removing paragraph (g).

The revisions and addition read as follows:

§ 3.2600 Legacy review of benefit claims decisions.

* * * * *

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under the version of § 3.103(c) of this chapter predating Public Law 115-55.

* * * * *

■ 8. On page 177, in the second column, in the second table, add the entry "20.304.19.54" at the end of the table.

■ 9. On page 180, first column, before instruction 95, add instruction 94a and its corresponding regulatory text to read as follows:

94a. Amend newly redesignated § 20.101 by revising the section heading and paragraph (b) to read as follows:

§ 20.101 Rule 101. Composition of the Board; titles.

* * * * *

(b) A Member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

■ 10. On page 180, second column, before instruction 96, add instruction 95a and its corresponding regulatory text to read as follows:

95a. Amend newly redesignated § 20.103 by revising the section heading to read as follows:

§ 20.103 Rule 103. Principal functions of the Board.

* * * * *

■ 11. On page 180, third column, before instruction 97, add instructions 96a through 96e and their corresponding regulatory text to read as follows:

96a. Revise newly redesignated § 20.105 to read as follows:

§ 20.105 Rule 105. Criteria governing disposition of appeals.

In the consideration of appeals and in its decisions, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

■ 96b. Amend newly redesignated § 20.106 by revising the section heading to read as follows:

§ 20.106 Rule 106. Assignment of proceedings.

* * * * *

■ 96c. Amend newly redesignated § 20.107 by:

- a. Revising the section heading;
- b. Removing paragraph (b) and the authority citation following paragraph (b);
- c. Redesignating paragraph (c) as paragraph (b); and d. In newly redesignated paragraph (b), removing the text “paragraphs (a) and (b)” and adding in its place the text “paragraph (a)”.

The revision reads as follows:

§ 20.107 Rule 107. Disqualification of Members.

* * * * *

■ 96d. Amend newly redesignated § 20.108 by revising the section heading to read as follows:

§ 20.108 Rule 108. Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

* * * * *

■ 96e. Revise newly redesignated § 20.109 to read as follows:

§ 20.109 Rule 109. Delegation of authority to Vice Chairman, Deputy Vice Chairmen, or Members of the Board.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 106(b) and 107(b) (§§ 20.106(b) and 20.107(b)) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 1004 and 1002(c) (§§ 20.1004 and 20.1002(c)) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

■ 12. On page 183, in the second column, above the Subpart F heading, correct “§§ 20.404–20.499 [Reserved]” to read “§§ 20.408–20.499 [Reserved]”.

§ 20.6 [Corrected]

■ 13. On page 184, in the first column, in § 20.6, in line 14 of paragraph (a)(1), remove the quotation mark before “§ 14.630”.

■ 14. On page 184, in the second column, correct the heading and instruction 120 to read as follows:

§§ 20.606–20.611 [Reserved]

■ 120. Add reserved §§ 20.606–20.611.

■ 15. On page 187, in the third column, correct the section heading of the newly redesignated § 20.709 to read as follows:

§ 20.709 Rule 709. Subpoenas.

* * * * *

■ 16. On page 188, in the third column, under the heading “§ 20.800 [Redesignated as § 20.901]”, remove “153.” from the end of the instruction.

■ 17. On page 190, before instruction 162, add instructions 161a through 161c and their corresponding regulatory text to read as follows:

■ 161a. Amend newly redesignated § 20.903:

■ a. By revising the section heading;

■ b. In the second sentence of paragraph (b), by removing the words “separately stated”;

■ c. By removing the authority citation at the end of paragraph (b); and

■ d. By adding an authority citation at the end of the section.

The revision and addition read as follows:

§ 20.903 Rule 903. The decision.

* * * * *

(Authority: 38 U.S.C. 7104(d) (2016))

■ 161b. Amend newly redesignated § 20.904:

■ a. By revising the section heading;

■ b. In paragraph (c), by removing the text “subpart B of this part” and adding in its place the text “part 19, subpart B of this chapter”;

■ c. In paragraph (c), by removing the text “§ 20.204” and adding in its place the text “§ 19.55”;

■ d. In paragraph (d)(3), by removing the text “§ 20.1304(c) of this chapter” and adding in its place the text “Rule 1305 (§ 20.1305(c) of this part)”;

■ e. In paragraph (d)(4), by removing the text “§ 20.901 of this chapter” and adding in its place the text “Rule 906 (§ 20.906 of this part)”;

■ f. By revising the authority citation at the end of the section.

The revisions read as follows:

§ 20.904 Remand or referral for further action.

* * * * *

Authority: 38 U.S.C. 7102, 7103(c); 38 U.S.C. 7104(a), 7105 (2016).

■ 161c. Amend newly redesignated § 20.905 by revising the section heading to read as follows:

§ 20.905 Rule 905. Content of Board decision, remand, or order in simultaneously contested claims.

* * * * *

§ 20.1000 [Corrected]

■ 18. On page 191, in the first column, in § 20.1000, in paragraph (a)(3), correct “app7al” to read “appeal”.

■ 19. On page 191, in the second column, before instruction 170, add instruction 169a and its corresponding regulatory text to read as follows:

169a. Amend newly redesignated § 20.1004 by:

- a. Revising the section heading; and
- b. Removing the word “heard” in paragraph (b) and adding in its place the word “decided” both places it appears.

The revision reads as follows:

§ 20.1004 Rule 1004. Reconsideration panel.

* * * * *

Approved: February 6, 2019.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019-01840 Filed 2-14-19; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0212; FRL-9984-75-Region 1]

Air Plan Approval; Connecticut; Prevention of Significant Deterioration; Revisions to the Prevention of Significant Deterioration Greenhouse Gas Permitting Authority

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 Connecticut. This revision affects provisions applicable to greenhouse gases (GHGs) in the EPA's Prevention of Significant Deterioration (PSD) permit program. Connecticut requested the revision in response to the June 23, 2014, U.S. Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*. The intended effect of this action is to clarify that the State's PSD rules do not require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs: Above the PSD applicability thresholds for new major sources or for which there is a significant emissions increase from a modification. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on March 18, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0212. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, tel. (617) 918-1657, email dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On June 15, 2018 (83 FR 27936), the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of removing the requirement that a source would have to obtain a PSD permit solely due to its GHG emissions, commonly known as "Step 2" sources. The formal SIP revision was submitted by Connecticut on February 15, 2018. The rationale for the EPA's proposed action is explained in the NPRM and will not be restated here.

II. Response to Comments

The EPA received four comments during the comment period. One comment supported the EPA's proposed action. Three comments discuss subjects outside the scope of this SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, these three comments are not germane and do not require further response to finalize the action as proposed.

III. Final Action

The EPA is approving Connecticut's removal from Connecticut's SIP of the requirement that sources must obtain a

PSD permit based solely on a source's GHG emissions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to RSCA Section 22a-174-3a(a)(1) entitled "Applicability," RSCA Section 22a-174-3a(j)(1) for when control technology applies, and RSCA Sections 22a-174-3a(k)(1) and (2) regarding applicability of GHGs for major stationary sources and major modifications, in the amendments to 40 CFR part 52 set forth below. All three state regulations were effective February 8, 2018. The EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov>.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action

and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 16, 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 in 40 CFR Part 52

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

Dated: February 7, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(120) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on February 28, 2018.

(i) *Incorporation by reference.* (A) Regulations of Connecticut State Agencies, Section 22a-174-3a, “Permit to Construct and Operate Stationary Sources,” amended February 8, 2018:

(1) 22a-174-3a(a)(1), “Applicability and Exemptions,” except (a)(1)(C) and (G);

(2) 22a-174-3a(j)(1), “Best Available Control Technology (BACT);” and

(3) 22a-174-3a(k)(1) and (2), “Permit Requirements for Attainment Areas: Prevention of Significant Deterioration of Air Quality (PSD) Program.”

■ 3. In § 52.385, Table 52.385 is amended by adding an entry for state citation 22a-174-3a in numerical order by state citation and date approved by EPA to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
22a-174-3a	Permit to Construct and Operate Stationary Sources.	2/8/2018	2/15/2019	[Insert Federal Register citation].	(c)(120)	Revised section 22a-174-3a(a)(1) entitled “Applicability,” section 22a-174-3a(j)(1) for when control technology applies, and sections 22a-174-3a(k)(1) and (2) regarding applicability of GHGs for major stationary sources and major modifications.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2017-0530; FRL-9985-23]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of trifloxystrobin in or on flax seed and amends an existing tolerance for aspirated grain fractions. Bayer CropScience requested these tolerances and amendments under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 15, 2019. Objections and requests for hearings must be received on or before April 16, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0530, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfRNNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0530 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 16, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0530, by one of the following methods:

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

delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 27, 2018 (83 FR 8408) (FRL-9972-17), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 7F8595 and 7F8633) by Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. The petitions requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide trifloxystrobin in or on flax, seed at 0.4 parts per million (ppm) (7F8595) and requested an amendment of the existing tolerance in or on grain, aspirated fractions from 5.0 ppm to 15 ppm (7F8633). That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the commodity definitions and tolerance values. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

result to infants and children from aggregate exposure to the pesticide chemical residue”

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

A. Toxicological Profile

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

With repeated dosing, the liver is consistently the target organ for trifloxystrobin. Liver effects characterized by an increase in liver weights and an increased incidence of hepatocellular hypertrophy and/or hepatocellular necrosis were seen in rats, mice, and dogs. The effects of reduced body weights and food consumption were also found in the majority of the toxicity studies. Intestinal disturbances, as indicated by diarrhea and vomiting, were seen in dogs and rats at higher dose levels relative to those which caused liver and body weight effects. This finding was consistent with those produced by other members of the strobilurin class.

In the rabbit developmental toxicity study, an increase in the incidence of

fused sternabrae was seen at a dose (500 mg/kg/day) 10 times higher than the maternal LOAEL (50 mg/kg/day). No developmental toxicity was seen at the limit dose (1,000 mg/kg) in the rat developmental toxicity study, but decreased body weight and food consumption was found in the maternal animals at 100 mg/kg/day or above. In the rat reproduction study, both parent and offspring showed decreases in body weight during lactation at similar dose levels (55.3 mg/kg/day). Therefore, there is no evidence of a qualitative or quantitative increase in sensitivity in the fetuses and pups of the developmental and reproduction studies, respectively. Trifloxystrobin was determined not to be carcinogenic in mice or rats following long-term dietary administration. Mutagenicity testing was positive in Chinese Hamster V79 cells at cytotoxic dose levels but negative in the remaining mutagenicity studies.

Trifloxystrobin was not neurotoxic in the acute neurotoxicity study, nor in any of the repeated dose studies in the available data. The requirement for a subchronic neurotoxicity study was waived because there is no evidence of neurotoxicity in the existing trifloxystrobin database or that of other strobilurin pesticides, and there are no neurotoxicity concerns for trifloxystrobin. However, a subchronic inhalation toxicity study is required for trifloxystrobin at this time.

Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in the document titled “*Trifloxystrobin. Human Health Risk Assessment for the Proposed New*

Use on Flax Seed and Increase of Established Tolerance on Aspirated Grain Fractions” on pages 28–30 in docket ID number EPA–HQ–OPP–2017–0530.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for trifloxystrobin used for human risk assessment is shown in Table 1 of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 250 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF = 1x	Acute RfD = 2.5 mg/kg/day. aPAD = 2.5 mg/kg/day	Developmental—Rabbit LOAEL = 500 mg/kg/day based on increased fetal skeletal malformation such as fused sternabrae.
Acute dietary (General population including infants and children).	There were no appropriate toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including maternal effects in developmental studies in rats and rabbits. Therefore, a dose and endpoint were not identified for this risk assessment.		

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL= 3.8 mg/kg/day UF _A = 10x. UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.038 mg/kg/day. cPAD = 0.038 mg/kg/day	Two-Generation Reproduction—Rat Maternal LOAEL = 55.3 mg/kg/day based on decreased body weight and histopathological lesions in the liver, kidney and spleen. Offspring LOAEL = 55.3 mg/kg/day based on decreased pup body weights during lactation.
Incidental oral short-term (1 to 30 days).	NOAEL= 3.8 mg/kg/day UF _A = 10x. UF _H = 10x FQPA SF = 1x	LOC for MOE = 100	Two-Generation Reproduction—Rat Maternal LOAEL = 55.3 mg/kg/day based on decreased body weight and histopathological lesions in the liver, kidney and spleen. Offspring LOAEL = 55.3 mg/kg/day based on decreased pup body weights during lactation.
Inhalation all durations	Oral study NOAEL= 3.8 mg/kg/day. UF _A = 10x UF _H = 10x UF _{DB} = 10x	LOC for MOE = 1000.	Two-Generation Reproduction—Rat Maternal LOAEL = 55.3 mg/kg/day based on decreased body weight and weight gain, decreased food consumption, liver, kidney and spleen effects. Offspring LOAEL = 55.3 mg/kg/day based on decreased pup body weights during lactation.
Cancer (Oral, dermal, inhalation).	Classification: “Not likely to be Carcinogenic to Humans” based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin in food as follows:

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

Such effects were identified for trifloxystrobin. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture’s (USDA’s) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined acute dietary assessment assuming tolerance-level residues for all crop commodities, with DEEM default processing factors. For ruminant and swine liver, and meat byproducts, a correction factor of 3x was applied to the tolerance to account for contribution of Metabolite L7a in these commodities (not applicable to kidney). All other livestock commodities used tolerance-level residues.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA’s NHANES/WWEIA. As to residue levels in food, EPA conducted a partially refined chronic (food and drinking water) dietary assessment assuming average field trial residues for selected crops (subgroup 4–16A and 4–16B; subgroup 5–16; subgroup 13–07F; subgroups 19A and 19B; subgroups 22A and 22B; oranges; apples, and rice); all other crop commodities used tolerance-level residues. Percent crop treated (PCT) data were incorporated where available. Empirical and DEEM default processing factors were used. To account for contribution of Metabolite L7a, a 3x correction factor was applied to ruminant and swine liver, and meat byproducts (not applicable to kidney). All other livestock commodities used tolerance-level residues.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that trifloxystrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide

residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

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

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

require registrants to submit data on PCT.

The following average percent crop treated estimates were used in the chronic dietary risk assessment for the following crops for which trifloxystrobin is currently registered: Almonds: 5%, apples: 25%, apricots: 10%, artichokes: 25%, cantaloupes: 5%, carrots: 2.5%, celery: 20%, cherries: 25%, corn: <2.5%, cucumbers: <2.5%, dry beans/peas: <1%, grapefruit: 30%, grapes: 25%, hazelnuts: 65%, nectarines: 5%, oranges: 5%, peaches: <2.5%, peanuts: 5%, pears: 10%, pecans: 15%, peppers: 5%, pistachios: 10%, plums/prunes: <2.5%, potatoes: <1%, pumpkins: 5%, rice: 15%, soybeans: <2.5%, squash: <2.5%, strawberries: 5%, sugar beets: 5%, sweet corn: <2.5%, tangerines: 5%, tomatoes: <2.5%, walnuts: <2.5%, watermelons: 5%. 100% CT was assumed for the remaining commodities.

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

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

Based on the Pesticide in Water Calculator (PWC), the estimated drinking water concentrations (EDWCs) of trifloxystrobin for acute exposures are

estimated to be 41 parts per billion (ppb) for surface water and 631 ppb for ground water; and for chronic exposures are estimated to be 28 ppb for surface water and 356 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 631 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 356 ppb was used to assess the contribution to drinking water.

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

Trifloxystrobin is currently registered for the following uses that could result in residential exposures: Turf and ornamentals. EPA assessed residential exposure using the following assumptions: Residential handler exposure and risk estimates from trifloxystrobin registrations were previously re-assessed in 2014 to reflect updates to the Agency’s 2012 Residential SOPs along with policy changes for body weight assumptions. Since the 2014 assessment, it has been determined that all trifloxystrobin product labels with potential residential use sites require that handlers wear specific clothing (e.g., long sleeve shirt/long pants) and use personal protective equipment (PPE). Therefore, EPA has made the assumption that trifloxystrobin products are not for homeowner use, and has not conducted a quantitative residential handler assessment at this time. Based upon the residential uses, adults and children performing physical post-application activities on turf (e.g., golfing, mowing) or ornamentals (e.g., activities in or around gardens or trees) may be exposed via dermal exposure to trifloxystrobin residues and children 1 to <2 years old may also be exposed via incidental oral post-application exposure to trifloxystrobin from treated turf. A dermal assessment was not conducted because an adverse systemic dermal hazard was not identified for trifloxystrobin. Therefore, the quantitative exposure/risk assessment for residential post-application exposures is based on incidental oral exposures from physical activities on turf (i.e., for children 1 to <2 years old).

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

science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.

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

EPA has not found trifloxystrobin to share a common mechanism of toxicity with any other substances, and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that trifloxystrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

D. Safety Factor for Infants and Children

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

2. Prenatal and postnatal sensitivity. There is no increased quantitative or qualitative susceptibility to trifloxystrobin in the developing or young animals as indicated by the results of the developmental studies in rat and rabbits and the 2-generation reproduction study in rats.

3. Conclusion. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x for all routes of exposure other than inhalation. The FQPA SF of 10x has been retained for

inhalation endpoints only to account for the lack of the subchronic inhalation toxicity study for trifloxystrobin at this time. This decision is based on the following findings:

i. The toxicity database for trifloxystrobin is complete with the exception of a subchronic inhalation toxicity study.

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

iii. There is no evidence that trifloxystrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. The exposure databases are complete, and the exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of trifloxystrobin. The chronic dietary food exposure assessment was partially refined based on average residues and PCT for some crops and conservative ground water drinking water modeling estimates. The dietary drinking water assessment utilizes water concentration values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations, and are not likely to be exceeded. In addition, the residential post-application assessment is based upon the residential SOPs employing surrogate study data, as well as the use of a chemical-specific turf transferable residue study. The Residential SOPs are based upon reasonable "worst-case" assumptions and are not expected to underestimate risk. These data are reliable and are not expected to underestimate risk to adults or children.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for

acute exposure, the acute dietary exposure from food and water to trifloxystrobin will occupy 3.4% of the aPAD for females 13–49 years old, the only population group of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to trifloxystrobin from food and water will utilize 58% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of trifloxystrobin is not expected.

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

Trifloxystrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to trifloxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 120 for children 1 to less than 2 years old. Because EPA's level of concern for trifloxystrobin is a MOE of 100 or below, this MOE is not of concern.

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

An intermediate-term adverse effect was identified; however, trifloxystrobin is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for trifloxystrobin.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies,

trifloxystrobin is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography method with nitrogen phosphorus detection (GC/NPD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

B. International Residue Limits

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

The Codex has not established a MRL for trifloxystrobin in or on flax seed or aspirated grain fractions.

C. Response to Comments

Two comments were received to the Notice of Filing. One appeared to be related to the Department of Energy and stated in part that "any environmentalist policy that would drive up the cost of energy, food, or other essential needs in the name of protecting nature must be rejected." This comment is not relevant to this action. A second comment stated in part "Do not allow this toxic pesticide to be used anywhere in the world. Nobody needs this toxic chemical unleashed."

Although the Agency recognizes that some individuals believe that pesticides

should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these trifloxystrobin tolerances are safe. The commenter has provided no information supporting a contrary conclusion.

D. Revisions to Petitioned-For Tolerances

The Agency is establishing the tolerance value on flax seed as requested but with the addition of a significant figure based on current practice and establishing a tolerance on grain, aspirated fractions using the commodity definition that is consistent with common commodity vocabulary currently used by the Agency. Also, based upon the relevant field trial and processing studies, EPA is modifying the tolerance in/on aspirated grain fractions to 10 ppm, not 15 ppm as proposed by the registrant. This is due to differences in how the Agency and the registrant each calculated the processed commodity residues for aspirated grain fractions.

V. Conclusion

Therefore, a tolerance is established for residues of trifloxystrobin, including its metabolites and degradates, in or on flax, seed at 0.40 ppm, and the existing tolerance for grain, aspirated fractions is amended from 5.0 ppm to 10 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance and amends a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling

Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 19, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.555, add alphabetically the entry “Flax, seed” and revise the entry for “Grain, aspirated fractions” in the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Flax, seed	0.40
Grain, aspirated grain fractions	10

* * * * *
[FR Doc. 2019-02523 Filed 2-14-19; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2017-0420; FRL-9983-89]

Trifluralin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of trifluralin in or on rosemary fresh leaves, rosemary dried leaves, and rosemary oil. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 15, 2019. Objections and requests for hearings must be received on or before April 16, 2019, and must

be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0420, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDPRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0420 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 16, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0420, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 23, 2017 (82 FR 49020) (FRL-9967-37), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8580) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition

requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide trifluralin a,a,a-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine in or on rosemary, fresh leaves at 0.1 parts per million (ppm); rosemary, dry leaves at 0.1 ppm; and rosemary, oil at 2.18 ppm. That document referenced a summary of the petition prepared by Gowan Company, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the level at which the tolerance is being established for rosemary oil, and modified the significant figures and commodity definitions used to be in line with Agency policy. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The primary target organs are the kidney and the liver in rats and dogs for trifluralin. Liver effects include increased liver weights and changes in clinical chemistry parameters. In the kidneys, tubular hyaline casts, minimal cortical tubular epithelial regeneration were observed microscopically, and an increased incidence of progressive glomerulonephritis was seen.

In the rat developmental toxicity study, developmental effects (increased resorptions and wavy ribs) occurred in the presence of less severe maternal effects (decreases in body weight gain, clinical signs, and changes in organ weights). In the 2-generation reproduction study, offspring effects (decreased fetal, neonatal and litter viability) were observed at a dose level where there was less severe maternal toxicity (decreased body weight, body weight gain and food consumption). However, the concern was low since clear NOAELs/LOAELs were established for maternal and developmental toxicities and the doses selected for overall risk assessment would address the concerns seen in these studies. A 21-day dermal toxicity study in the rat showed no systemic toxicity at the limit dose of 1,000 mg/kg/day; dermal effects included sub-epidermal inflammation and ulcerations at 200 mg/kg/day. A rabbit 21-day dermal toxicity study also did not show any systemic toxicity at 1,000 mg/kg/day; dermal effects observed at the LOAEL (100 mg/kg/day) included erythema, edema, and/or scaling and fissuring. A 30-day inhalation exposure to rats with trifluralin at 1,000 mg/m³ resulted in increased methemoglobin and bilirubin, as well as dyspnea and ruffled fur. Trifluralin is not a neurotoxicant and does not appear to be an immunotoxicant.

In male rats, trifluralin was associated with increased incidence of thyroid follicular cell combined adenoma, papillary adenoma, cystadenoma, and carcinoma tumors. It has been classified as “Group C, possible Human Carcinogen.” Extensive testing showed, however, that trifluralin is neither mutagenic nor genotoxic, and does not inhibit the polymerization of microtubules in mammalian cells.

Specific information on the studies received and the nature of the adverse effects caused by trifluralin as well as the no-observed-adverse-effect-level

(NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in the document titled “*Trifluralin: Human Health Draft Risk Assessment for Registration Review and a Proposed Section 3 Use of Trifluralin on Rosemary*” on pages 52–59 in docket ID number EPA–HQ–OPP–2017–0420.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for trifluralin used for human risk assessment is discussed in Unit II.B. of the final rule published in the **Federal Register** of July 31, 2013 (78 FR 46267) (FRL–9393–5).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifluralin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifluralin tolerances in 40 CFR 180.207. EPA assessed dietary exposures from trifluralin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the

possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for trifluralin. In estimating acute dietary exposure, EPA used 2003–2008 food consumption data from the U.S. Department of Agriculture’s (USDA’s) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined assessment using tolerance level residues, 100 percent crop treated (PCT), and default Dietary Exposure Evaluation Model (DEEM) processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the USDA’s NHANES/WWEIA. As to residue levels in food, the chronic dietary exposure and risk estimates are somewhat refined and assumed tolerance-level residues for the majority of commodities, PCT data for some existing uses, and DEEM default processing factors. Pesticide Data Program (PDP) monitoring data were used for carrots, potatoes, bell peppers, non-bell peppers, tomatoes, tomato paste, oranges, orange juice, grapes, grape juice, raisins, corn syrup, and wheat flour.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data is not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that trifluralin should be classified as a possible human carcinogen and a linear approach has been used to quantify cancer risk since no mode of action data are available.

The aggregate cancer risk assessment for adults takes into account exposure estimates from dietary consumption of trifluralin from food, residential and drinking water sources. Exposures from residential uses are based on the lifetime average daily dose and assume an exposure period of 5 days per year and 50 years of exposure in a lifetime. Dietary exposure assumptions were

quantified using the same estimates as discussed in Unit III.C.1.ii., Chronic exposure.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCFA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCFA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCFA section 408(b)(2)(E) and authorized under FFDCFA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

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

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

The Agency estimated the PCT for existing uses as follows:

The chronic and cancer dietary exposure and risk assessments incorporated the following trifluralin average percent crop treated estimates: Almonds 2.5%; apricots 2.5%; asparagus 20%; barley 1%; beans, green 25%; broccoli 5%; Brussels sprouts 2.5%; cabbage 40%; canola 2.5%; cantaloupes 25%; carrots 30%; cauliflower 5%; celery 2.5%; chicory 20%; corn 1%; cotton 30%; cucumbers 2.5%; dry beans/peas 10%; grapefruit 2.5%; grapes 2.5%; honeydews 30%; lemons 2.5%; nectarines 2.5%; oranges 2.5%; peaches 1%; peanuts 5%; peas, green 10%; pecans 1%; peppers 20%; plums/prunes 1%; potatoes 2.5%; pumpkins 5%; sorghum 2.5%; soybeans 2.5%; squash 2.5%; sugar beets 2.5%;

sugarcane 5%; sunflowers 5%; tomatoes 55%; walnuts 1%; watermelons 15%; and wheat 1%. For the remaining commodities, EPA assumed 100% crop treated.

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models as well as monitoring data in the dietary exposure analysis and risk assessment for trifluralin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifluralin. The estimated drinking water concentrations (EDWCs) were calculated using a Total Toxic Residues (TTR) exposure modeling method, where trifluralin and its major degradates of concern (TR–4, TR–6, TR–7, TR–14, and TR–15) were combined. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide>.

Based on the Pesticide in Water Calculator (PWC), the estimated drinking water concentrations (EDWCs) of trifluralin for acute exposures are estimated to be 57 parts per billion (ppb) for surface water and 1.0 ppb for ground water; for chronic exposures for non-cancer assessments are estimated to be 15 ppb for surface water and 1.0 ppb for ground water; and for chronic exposures for cancer assessments are estimated to be 4.4 ppb for surface water and 1.0 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the

acute dietary risk assessment, the water concentration value of 57 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 15 ppb was used to assess the contribution to drinking water. For the cancer dietary risk assessment, the water concentration of value 4.4 ppb was used to assess the contribution to drinking water.

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

Trifluralin is currently registered for the following uses that could result in residential exposures: lawns, golf courses, vegetable and ornamental gardens. EPA assessed residential exposure using the following assumptions: For residential handlers, all registered trifluralin product labels with residential use sites (e.g., lawns, ornamental and vegetable gardens) require that handlers wear specific clothing (e.g., long sleeve shirt/long pants) and/or use personal protective equipment (PPE) except for one label. Therefore, EPA has assumed that only that one product is intended for homeowner use and has conducted a quantitative residential handler assessment based on the use sites and application rates as provided on the label. The quantitative exposure/risk assessment developed for residential handlers is based on the following scenarios: Applying granules via push-type spreader, spoon, cup, hand dispersal, and shaker can to residential vegetable and ornamental gardens.

Although a non-cancer dermal risk assessment was not performed due to the lack of an adverse effect in the non-cancer dermal study, dermal exposure was estimated for the residential handler cancer risk assessment because dermal exposure does contribute to the overall cancer risk for trifluralin.

There is the potential for post-application exposure for individuals exposed as a result of being in an environment that has been previously treated with trifluralin. For the residential post-application scenarios, all registered trifluralin product labels with residential use sites (e.g., turf/lawns and ornamental and vegetable gardens) were considered for quantitative assessment. Although there is the potential for dermal exposure to adults and children, a quantitative non-cancer dermal risk assessment was not conducted since no non-cancer dermal hazard was identified. The quantitative

non-cancer exposure/risk assessment for residential post-application exposures is based on the following scenario: Incidental oral (hand to mouth, object to mouth, and soil ingestion) exposure for children (1 to <2) from granular formulations applied to turf.

Episodic granular ingestion for children is a potential exposure pathway for granular formulations; however, this exposure scenario could not be assessed because an acute dietary endpoint for general population, including infants and children, was not selected due to no effect attributable to a single (or few) day(s) oral exposure observed in animal studies.

Although a non-cancer dermal risk assessment was not performed due to the lack of an adverse effect in the non-cancer dermal study, dermal exposure was estimated for the residential post-application cancer risk assessment because dermal exposure does contribute to the overall cancer risk for trifluralin. Inhalation exposure is expected to be negligible.

The worst-case residential exposure scenario used in the adult non-cancer aggregate assessment reflects inhalation exposure from applications to gardens via hand dispersal.

The worst-case residential exposure used in the adult cancer aggregate assessment reflects dermal exposure from post-application exposure from liquid applications to treated gardens.

The worst-case residential exposure used in the children 1<2 years old aggregate assessment reflects hand-to-mouth exposures from post-application exposure to turf applications.

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

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

Based on a review of the toxicological database for trifluralin and the other dinitroanilines (benfluralin, butralin, ethalfuralin, fluazinam, flumetralin, oryzalin, pendimethalin, and prodiamine), the Agency has determined that although trifluralin shares some chemical and/or toxicological characteristics (e.g.,

chemical structure or apical endpoint) with these other dinitroanilines, the toxicological database does not support a testable hypothesis for a common mechanism of action. No further data are required to determine that no common mechanism of toxicity exists for trifluralin and the other dinitroanilines and no further cumulative evaluation is necessary for trifluralin. For additional details, refer to the document titled “*Dinitroanilines: Screening Analysis of Toxicological Profiles to Consider Whether a Candidate Common Mechanism Group Can Be Established*” in docket ID number EPA-HQ-OPP-2017-0420 in www.regulations.gov.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was evidence of increased qualitative susceptibility in the rat developmental toxicity study, where fetal developmental effects (increased resorptions and wavy ribs) occurred in the presence of less severe maternal effects (decreases in body weight gain, clinical signs, and changes in organ weights); however, the concern was low since clear NOAELs/LOAELs were established for maternal and developmental toxicities. There was also a low concern for the qualitative susceptibility observed in the rat reproduction study since the dose-response was also well characterized; there was a clear NOAEL/LOAEL for maternal and developmental toxicities; and the effects were seen at a high-dose level (295/337 mg/kg/day). Offspring viability was not adversely affected in the two other 2-generation studies with trifluralin at dose levels up to 100 and 148 mg/kg/day. Similarly, there are no residual uncertainties for pre- and postnatal toxicity since the doses selected for overall risk assessment will

address the concerns seen in these studies.

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

i. The toxicity database for trifluralin is complete.

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

iii. As noted in section D.2., there was evidence of increased qualitative susceptibility in the rat developmental toxicity study, however, the concern was low for the reasons outlined in that section; furthermore, there was also a low concern for the qualitative susceptibility observed in the rat reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on a refined risk assessment that incorporated some PCT and anticipated residue information. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to trifluralin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by trifluralin.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to trifluralin will occupy less than 1% of the aPAD for females 13–49 years old, the only population group of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to trifluralin from food and water will utilize 3.7% of the

cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of trifluralin is not expected.

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

Trifluralin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to trifluralin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 24,000 for adults and 15,000 for children 1 to less than 2 years old. Because EPA's level of concern for trifluralin is a MOE of 100 or below, these MOEs are not of concern.

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

An intermediate-term adverse effect was identified; however, trifluralin is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for trifluralin.

5. *Aggregate cancer risk for U.S. population.* A cancer aggregate assessment was conducted for trifluralin since it is classified as a "Group C, Possible Human Carcinogen" with a Q^1 of 2.96×10^{-3} (mg/kg/day)⁻¹ based upon male rat thyroid follicular cell combined adenoma, papillary adenoma, cystadenoma, and carcinoma tumor rate in human equivalents. The cancer aggregate risk assessment combines food and drinking water exposures with dermal and inhalation exposure from post-application

exposure from treated gardens. The resulting aggregate cancer risk estimate for adults is 1.5×10^{-6} .

EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or 1×10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the logarithmic scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6} . Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6} . This is particularly the case where some conservatism is maintained in the exposure assessment. EPA has concluded the cancer risk for all existing trifluralin uses and the uses associated with the tolerances established in this action fall within the range of 1×10^{-6} and are thus negligible.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC) with electron capture detection (ECD)) is available to enforce the tolerance expression.

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health

Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for trifluralin on rosemary.

C. Revisions to Petitioned-For Tolerances

EPA is establishing a tolerance of 3.0 ppm for residues of trifluralin in rosemary oil rather than the proposed value of 2.18 ppm based on Codex rounding classes. For the other tolerances that vary from what the petitioner requested, EPA is establishing tolerance values to conform to current Agency practices on significant figures.

V. Conclusion

Therefore, tolerances are established for residues of trifluralin, including its metabolites and degradates, in or on rosemary, dried leaves at 0.10 ppm; rosemary, fresh leaves at 0.10 ppm; and rosemary, oil at 3.0 ppm.

VI. Statutory and Executive Order Reviews

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

Populations” (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 21, 2018.

Donna S. Davis,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.207:

■ a. Revise the introductory text of paragraph (a).

■ b. Add alphabetically the entries for “Rosemary, dried leaves”; “Rosemary, fresh leaves”; and “Rosemary, oil” to the table in paragraph (a).

The revision and additions read as follows:

§ 180.207 Trifluralin; tolerances for residues.

(a) *General.* Tolerances are established for residues of trifluralin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only trifluralin (2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)benzenamine).

Commodity	Parts per million
* * * *	*
Rosemary, dried leaves	0.10
Rosemary, fresh leaves	0.10
Rosemary, oil	3.0
* * * *	*

* * * * *
[FR Doc. 2019-02535 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80-286, FCC No. 18-182]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its part 36 jurisdictional separations rules by extending for up to six years the freeze of separations category relationships and allocation factors that it originally

adopted in 2001. As a result, the freeze will remain in effect until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission also amends its part 36 jurisdictional separations rules by providing rate-of-return carriers that elected to freeze their separations category relationships in 2001 a one-time opportunity to unfreeze and update those relationships so that they can categorize their costs based on current circumstances.

DATES: These rules are effective February 15, 2019, except for the amendment to 47 CFR 36.3(b) which is delayed. The Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marvin Sacks, Pricing Policy Division of the Wireline Competition Bureau, at (202)-418-2017 or via email at *Marvin.Sacks@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a final rule summary of the Commission’s Report and Order, released December 17, 2018. A full-text version of this document can be obtained from the following internet address: <https://www.fcc.gov/document/fcc-extends-jurisdictional-separations-freeze-six-years>.

Synopsis

I. Introduction

1. In 1970, when monopoly rate-of-return local exchange carriers (LECs) provided telephone services primarily over circuit-switched, voice networks, the Commission codified its jurisdictional separations rules. Those rules required each LEC to divide its cost of providing service between the interstate and intrastate jurisdictions in a manner reflecting each jurisdiction’s relative use of the LEC’s network. In an era when the Commission and its State counterparts set virtually all telephone rates based on actual costs, the separations rules helped ensure that each LEC had the opportunity to recover its expenses and earn a reasonable return on its investments.

2. Today, phone companies deliver voice, data, and video services that are increasingly being provided over internet Protocol-based networks. New digital technologies blur the lines between interstate and intrastate communications, making last century’s jurisdictional separations rules inadequate and outmoded vis-à-vis their

intended purpose. Moreover, the relevance of the cost-separation rules has diminished, as the Commission has incrementally replaced burdensome rate-of-return regulation with the efficiencies of incentive regulation. Currently, only a small percentage of Americans receive their telecommunications services from providers subject to rate-of-return regulation and the cost separation rules. Nevertheless, the Commission's separations rules continue to play an important role in determining how rate-of-return carriers recover some of their costs.

3. In 1997, the Commission recognized the need to comprehensively reform the separations rules and referred separations reform to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) for a recommended decision. More than twenty years later, the Joint Board has not reached agreement on comprehensive separations reform. And so, starting in 2001, originally at the behest of the Joint Board, the Commission has completed several rulemaking proceedings to freeze the separations rules to stabilize and simplify the separations process pending reform. Most recently, the Commission extended the freeze until December 31, 2018.

4. Today, the Commission breaks this cycle. Because so little progress has been made on comprehensive separations reform over the past 20 years, the Commission extends the separations freeze for up to six years so that it and the Joint Board can devote their resources to substantive reform, rather than to extending artificial deadlines. And because previous attempts at comprehensive reform have failed, the Commission requests that the Joint Board approach the challenge incrementally. The Commission asks that, in the short term, the Joint Board focus on how best to amend the separations rules to recognize that they impact only rate-of-return carriers and on whether any other separations rules or recordkeeping requirements can be modified or eliminated in light of that limited application. Coming to a decision on these issues will reduce the Joint Board's work over the longer term as it seeks to replace the existing jurisdictional separations process with a simplified system for reasonably allocating costs between the interstate and intrastate jurisdictions. The Commission begins this incremental reform by allowing rate-of-return carriers that elected to freeze their separations category relationships in 2001 to opt out of that freeze.

II. Background

A. *The Jurisdictional Separations Process*

5. Jurisdictional separations is the third step in a four-step regulatory process. First, a rate-of-return carrier records its costs and revenues in various accounts using the Uniform System of Accounts prescribed by the Commission's part 32 rules. Second, the carrier divides the costs and revenues in these accounts between regulated and nonregulated activities in accordance with the Commission's part 64 rules, a step that helps ensure that the costs of nonregulated activities will not be recovered through regulated interstate rates. Third, the carrier separates the regulated costs and revenues between the interstate and intrastate jurisdictions using the Commission's part 36 jurisdictional separations rules. Finally, the carrier apportions the interstate regulated costs among the interexchange services and the rate elements that form the cost basis for its exchange access tariffs. Carriers subject to rate-of-return regulation perform this apportionment in accordance with the Commission's part 69 rules.

6. To comply with these rules, rate-of-return incumbent LECs perform annual cost studies that include jurisdictional separations. The jurisdictional separations analysis begins with the categorization of the incumbent LEC's regulated costs and revenues, requiring the incumbent LEC to assign the regulated costs and revenues recorded in its part 32 accounts to various investment, expense, and revenue categories. Part 36 (or separations) category relationships are percentages of costs recorded in a part 32 account that are assigned to separations categories corresponding to that account. The incumbent LEC then allocates the costs or revenues in each category between the interstate and intrastate jurisdictions. Amounts in categories that are used exclusively for interstate or intrastate communications are directly assigned to the appropriate jurisdiction. Amounts in categories that support both interstate and intrastate services are divided between the jurisdictions using allocation factors that reflect relative use or a fixed percentage.

B. *Attempts at Jurisdictional Separations Reform and the Separations Freeze*

7. In 1997, recognizing that "changes in the law, technology, and market structure of the telecommunications industry" necessitated a thorough reevaluation of the jurisdictional separations process, the Commission

initiated a proceeding to comprehensively reform the separations rules. At the same time, pursuant to section 410(c) of the Communications Act of 1934, as amended (the Communications Act), the Commission referred the matter of jurisdictional separations reform to the Joint Board for a recommended decision. Section 410(c) requires the Commission to "refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it initiates pursuant to a notice of proposed rulemaking" to a Joint Board. Section 410(c) further specifies that after such a referral the Joint Board "shall prepare a recommended decision for prompt review and action by the Commission."

8. Since the Commission initiated this proceeding in 1997, the Joint Board—comprised of both State and federal members—has been attempting to develop recommendations for comprehensive reform. In response to the Commission's initial referral, the State members of the Joint Board filed a report identifying issues they believed should be addressed. Over the years, the State members filed policy papers setting out options for reform, the Commission or the Joint Board sought comment, and the Joint Board held hearings and meetings to consider the various proposals. In 2009, the Commission made a second referral of comprehensive jurisdictional separations reform to the Joint Board and asked that "the Joint Board prepare a recommended decision regarding whether, how, and when the Commission's jurisdictional separations rules should be modified." In 2010, the State members of the Joint Board submitted a limited interim proposal, and the Joint Board sought comment on their behalf. Despite two Commission referrals seeking a recommended decision on comprehensive separations reform, the Joint Board has not advanced a recommended decision on comprehensive reform to the Commission.

9. In the course of considering comprehensive reform, the Joint Board did issue a recommendation, in 2000, that the Commission freeze the part 36 category relationships and jurisdictional allocation factors pending resolution of comprehensive reform. The Commission sought comment on that Recommended Decision; and based on the record before it, the Commission adopted the *2001 Separations Freeze Order*. The Commission concluded that a freeze would stabilize the separations process pending reform by minimizing any impact of cost shifts on separations

results due to circumstances—such as the growth of internet usage, new technologies, and local competition—not contemplated by the rules. The Commission also concluded that a freeze would simplify the separations process by eliminating the need for many separations studies until separations reform was implemented.

10. The Commission agreed with the Joint Board's Recommended Decision to freeze all part 36 category relationships and allocation factors for price cap carriers and to freeze all allocation factors for rate-of-return carriers. The Commission also agreed with the Joint Board that requiring rate-of-return carriers to freeze their category relationships could potentially harm these carriers. The Commission therefore provided rate-of-return carriers a one-time option to freeze their category relationships, enabling each of these carriers to determine whether such a freeze would be beneficial "based on its own circumstances and investment plans." Presently, rate-of-return carriers in about 45 study areas operate under the category relationships freeze.

11. In the *2001 Separations Freeze Order*, the Commission specified that the freeze would last for five years or until the Commission completed comprehensive separations reform, whichever came first. The Commission also concluded that, prior to the expiration of the five-year period, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be extended. The Commission specified that "the determination of whether the freeze should be extended at the end of the five-year period shall be based upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time."

12. Since then, the Commission has extended the separations freeze seven times, for periods ranging from one year to three years, with the most recent extension expiring on December 31, 2018. In advance of all but one of the freeze extensions, the Commission sought comment on extending the freeze, but it has not referred the specific issue of freeze extensions to the Joint Board. In the *2009 Separations Freeze Extension Order and Second Referral*, the Commission asked the Joint Board to consider whether the Commission should allow carriers to unfreeze their separations category relationships and requested that the Joint Board prepare a recommended decision on that matter. The Joint Board has not made a recommendation on that request.

13. In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform. In its most recent freeze extension order, the Commission also explained that an extension until December 31, 2018, would provide the Joint Board with sufficient time to consider what effects the Commission's reforms to the high-cost universal service program and intercarrier compensation should have on the separations rules.

14. Earlier this year, the Commission issued a *Further Notice of Proposed Rulemaking (Further Notice)*, 83 FR 35582, July 27, 2018, proposing to extend the jurisdictional separations freeze for 15 years and inviting comment on that proposal. The Commission also sought comment on whether a shorter freeze extension would be preferable and on whether it should alter the scope of the referral to the Joint Board regarding comprehensive separations reform. In so doing, the Commission recognized that the issues before the Joint Board are extremely complex and stated the Commission's preference not to move forward on separations reform without a Joint Board recommendation on an approach to such reform. The Commission also recognized that as a practical matter it would have to choose between extending the separations freeze and requiring changes to long-unchanged allocation factors and, for some carriers, category relationships to take effect on January 1, 2019.

15. The Commission also proposed and sought comment on allowing rate-of-return carriers that had elected to freeze their category relationships in 2001 to opt out of that freeze. The Commission explained that the category relationships freeze has lasted 17 years instead of no more than five years as the Commission and the Joint Board originally had contemplated. The Commission also explained that since opting into the category relationships freeze many rate-of-return carriers had invested in network upgrades or were considering doing so, and that, as a result of the category relationships freeze, these carriers may be unable to recover the costs of those investments from ratepayers that benefit from the upgrades or from the Universal Service Fund. Consequently, the Commission pointed out, these carriers may lack incentives to improve service and deploy advanced technologies like broadband for their customers.

C. Declining Applicability of Jurisdictional Separations Results

16. Over the course of the last decade, the jurisdictional separations rules have become irrelevant to the carriers that provide most Americans with telecommunications services. The separations rules were never applicable to wireless carriers. In 2008, the Commission granted price cap carriers forbearance from the separations rules; and recently the Commission extended this forbearance to rate-of-return carriers that receive fixed or model-based high-cost universal service support (fixed support carriers) and that elect incentive regulation for their business data services. As a result, by the middle of next year, the separations rules will apply only to rate-of-return carriers serving about 800 study areas.

17. Even for the carriers that remain subject to the separations rules, separations results have only limited applicability because of recent reforms by the Commission. As part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps (including a transition to bill-and-keep for certain rate elements) for switched access services for rate-of-return carriers, thereby severing the relationship between costs and switched access rates. In addition, in 2016, the Commission gave rate-of-return carriers the option of receiving high-cost universal service support based on the Alternative Connect America Cost Model (A-CAM). More than 200 carriers opted to receive A-CAM support, which eliminated the need for those carriers to perform cost studies that required jurisdictional separations to quantify the amount of high-cost support for their common line offerings. Also as part of universal service reform, the Commission established rules to provide support for loop costs associated with broadband-only services offered by rate-of-return carriers.

18. As a result of these reforms, the Commission currently uses separations results only for carriers subject to rate-of-return regulation and only for the following limited purposes of calculating: (a) Business data services rates; (b) the charge assessed on residential and business lines, known as a subscriber line charge, allowing carriers to recover part of the costs of providing access to the telecommunications network; (c) the rate for Consumer Broadband-Only Loop service; and (d) the interstate common line and Consumer Broadband-Only Loop support for non-fixed

support carriers. The administrator of the universal service support program, the Universal Service Administrative Company also uses separations categorization results for calculating high-cost loop support for certain non-fixed support carriers, but without applying jurisdictional allocations. States also use separations results to determine the amount of intrastate universal service support and to calculate regulatory fees, and some states perform rate-of-return ratemaking using intrastate costs.

III. Discussion

19. Based on the record in this proceeding, and cognizant of the impacts, both on rate-of-return carriers subject to the separations freeze and on the Commission, of the seven separations freeze extensions over the last 17 years, the Commission now extends for up to six years the freeze on part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the *2001 Separations Freeze Order*. This extension will begin on January 1, 2019, and will continue until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission also provides carriers that opted to freeze their separations category relationships in 2001 a one-time opportunity to unfreeze and update those relationships so that they can categorize their costs based on current circumstances.

A. Further Extending the Separations Freeze

20. The Commission finds, consistent with the recommendation of the State members of the Joint Board and the overwhelming consensus among the commenters, that an extension of the separations freeze beyond its December 31, 2018, expiration date will serve the public interest. As the Commission recognized in the *Further Notice*, this impending deadline compels the Commission to make a choice between extending the freeze further or allowing long-unused separations rules to take effect on January 1, 2019. The Commission finds that not extending the freeze would impose significant burdens on rate-of-return carriers that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001.

21. In particular, the Commission agrees with those commenters that argue that rate-of-return carriers, particularly smaller rural carriers, would find it extremely difficult, if not impossible, to

perform all of the studies needed for full compliance. The Commission has previously found that allowing the existing freeze to lapse and frozen separations rules to be reinstated would impose undue instability and administrative burdens on affected carriers. The record in this proceeding confirms that is still the case.

22. First, the Commission agrees with commenters that developing “traffic factors” to jurisdictionally separate costs assigned to voice-related services is “an arcane science” and that, after 17 years of not performing traffic factor studies, carriers would be required to incur substantial training and other costs to reestablish the expertise necessary to perform them. This expense would hit smaller, rural carriers with limited resources the hardest. The Commission cannot justify imposing such a burden on small carriers particularly given that the impact of such traffic factors is continuing to diminish as investment in voice services decreases due to growing deployment of broadband services.

23. Moreover, as NTCA explains, even if full compliance were possible, “these smaller providers would be forced to return to a regulatory environment that last operated in full nearly two decades ago.” The Commission cannot justify the costs of such compliance, given the outdated nature of the rules with which these small providers would have to comply. Furthermore, as the Commission previously explained, reinstating these largely outmoded rules in full measure could produce negative consequences by causing significant disruptions in carriers’ regulated rates, cost recovery, and other operating conditions.

24. The Commission therefore rejects the Irregulars’ argument that it should not extend the freeze. The Irregulars express concern that the freeze has led “to improper decision-making at various levels,” with, for example, State governments basing policy on obsolete numbers that over-allocate costs to the intrastate jurisdiction. Yet, they fail to explain how ending the freeze would alleviate any such misallocation. Instead, the Irregulars propose two options for completely revamping the jurisdictional separations process. While those proposals may be useful to the Joint Board’s consideration of comprehensive separations reform, they are beyond the scope of the question before the Commission today of whether to extend the separations freeze beyond December 31, 2018.

25. The Commission also finds that another short-term freeze extension will not provide the Joint Board, the

Commission, and interested stakeholders sufficient time to complete comprehensive separations reform. Indeed, several commenters support a fifteen-year freeze. By contrast, NARUC and the Colorado PUC both advocate for a freeze of no more than two years. In considering how long to extend the freeze, the Commission agrees with the State members of the Joint Board that an extension of up to six years is appropriate. A freeze of up to six years balances the competing considerations—the difficulty of comprehensive separations reform and the need to focus on that reform rather than on repeated freeze extensions—better than a longer or shorter extension period.

26. The difficulty of comprehensively reforming the separations rules cannot be overstated. The current rules focus on allocating between the interstate and intrastate jurisdictions the costs of circuit-switched voice services provided over primarily copper networks. Those rules have largely been in place since 1969, with some revisions in 1987, and minor revisions earlier this year to harmonize the part 36 rules with changes the Commission made to the part 32 rules. Since the freeze was first put in place, many rate-of-return carriers have converted much of their networks to packet-based technologies that provide telecommunications, information, and video services over fiber facilities. Comprehensive reform, as previously envisioned by the Commission, would entail rewriting the separations rules in a manner that recognizes these technological changes and is consistent with changes to the high-cost universal service program and intercarrier compensation systems. As the Commission’s track record of repeated extensions demonstrates, such reform is not a short-term project.

27. Accordingly, the Commission rejects NARUC’s argument that it should extend the freeze “on an interim basis for no more than two years to engage timely and substantively [with the Joint Board] on separations issues.” Given the Commission’s past experience with short-term separations freezes and stalled attempts at separations reform, the Commission finds that a two-year extension would almost certainly do nothing more than continue the cycle of repeated short-term freeze extensions that has diverted industry, State, and Commission resources away from substantive reform, forcing a break in whatever momentum toward meaningful separations reform the Commission and the Joint Board achieve, long before that reform is complete. The Commission believes

instead that an extension of up to six years makes separations reform more likely because it will halt that cycle and provide sufficient time for the Joint Board to focus on short-term and long-term steps toward comprehensive reform.

28. The Commission also declines to extend the freeze indefinitely, as USTelecom urges. USTelecom argues that the separations rules “have become increasingly irrelevant and unnecessary” and that the Commission should therefore focus on substantive intercarrier compensation and universal service reforms, rather than on separations reform. Although the Commission agrees that the separations rules are irrelevant to price cap carriers, they remain applicable to, and impose substantial obligations on, rate-of-return carriers serving about 800 study areas. The Commission therefore believes that there is value to continuing to work towards reform of those rules.

B. Allowing a One-Time Category Relationships Unfreeze

29. In the *Rate-of-Return Business Data Services Order*, the Commission allowed carriers subject to the category relationships freeze that receive model-based and other forms of fixed high-cost support and elect incentive regulation for business data services to opt out of that freeze and update their category relationships. In this proceeding, the Commission grants all other rate-of-return carriers operating under the category-relationships freeze the opportunity to opt out of it and update their category relationships—enabling those carriers to better recover network upgrade costs from ratepayers that benefit from those upgrades and to take greater advantage of universal service programs that incent broadband deployment.

30. *Category Relationships Unfreeze*. The rate-of-return carriers that elected to freeze their category relationships in 2001 did so based, in part, on the Commission’s representation that the freeze would last no more than five years. Those carriers did not and could not have anticipated that the category relationships freeze would be in place for more than 17 years. Yet, the Commission’s current rules prohibit carriers that elected the freeze from withdrawing from it. The result is that some, if not all, carriers with frozen category relationships are unable to recover their business data services costs from business data services customers or from NECA traffic sensitive pool settlements.

31. Rate-of-return carriers that chose to freeze their category relationships in

2001 assign costs within part 32 accounts to categories using their separations category relationships from 2000. Consequently, these companies are still categorizing their costs based on the technologies and services that were in place in 2000, instead of being able to adjust the amounts assigned to separations categories to reflect current network costs and services. This circumstance, in turn, distorts revenue requirements and resulting rates. Allowing carriers to unfreeze and update their category relationships will enable them to more closely align their business data services and Consumer Broadband-Only Loop service rates with the underlying costs of these services. It also will encourage those carriers to expand and upgrade their networks, thus enhancing their capability to provide these services.

32. The Commission also agrees with commenters that allowing affected carriers to opt out of the freeze will enable these carriers to take better advantage of universal service programs that promote broadband growth. As commenters point out, the category relationships freeze undermines incentives for certain carriers to move toward broadband-only services. Endeavor, for example, explains that, without an opportunity to unfreeze and re-categorize investment levels, the ability of carriers to qualify for support of broadband-capable network loops through the Connect America Fund—Broadband Loop Service (CAF-BLS) program is significantly reduced. Unfreezing category relationships will allow a carrier to assign broadband-only loop costs to the consumer broadband-only revenue requirement and also receive CAF-BLS support based on these costs, as carriers seek to meet consumer demand for broadband-only lines.

33. In addition, consistent with the Commission’s finding in the *Rate-of-Return Business Data Services Order* and the consensus of commenters in this proceeding including the State Members of the Federal-State Joint Board, the Commission concludes that affected carriers should be given the flexibility to choose whether to unfreeze their category relationships. Were the Commission instead to require all affected carriers to unfreeze and update their category relationships, the burden on some affected carriers could outweigh any potential benefits. As the Commission has recognized, the size, cost structures, and investment patterns of rate-of-return carriers vary widely. Certain rate-of-return carriers’ cost structures may not have changed significantly enough since the freeze

began to warrant the administrative costs that these carriers would incur in updating their category relationships, costs that would be borne by their customers and the high-cost universal service support program. Other carriers may find that updating their category relationships would disrupt business plans made based on a continuation of the category relationships freeze since it has been in effect for such a long period. Allowing affected carriers the flexibility to choose whether to unfreeze their category relationships properly recognizes that some carriers will embrace the opportunity to more accurately categorize their investments, while others would find updating their category relationships to be unduly costly or disruptive.

34. Consistent with Commission precedent, the Commission adopts July 1, 2019, as the effective date for opting out of the freeze. The Commission finds it important to implement the unfreeze option “efficiently and swiftly” while at the same time giving carriers enough time to prepare. Commenters generally agree that July 1, 2019, is a reasonable effective date. The Commission requires that carriers currently in the NECA traffic-sensitive pool notify NECA by March 1, 2019, of their decision to opt out of the category relationships freeze. This deadline provides the same advance notice that carriers exiting the NECA pool must give NECA under § 69.3 of the Commission’s rules. The Commission also requires carriers that file their own tariffs to provide the Wireline Competition Bureau with notice of their intent to opt out of the category relationships freeze by May 1, 2019.

35. The Commission finds there is insufficient basis in the record to modify any other aspects of the separations freeze. The Commission sought detailed input on several other possible modifications to the freeze, including whether carriers that unfreeze their category relationships should be permitted to refreeze them and whether carriers that did not freeze their category relationships in 2001 should be permitted to freeze them. In addition, carriers now apportion their categorized costs using jurisdictional allocation factors for the year 2000, and the Commission sought input on whether it should allow or require carriers to reset these factors using current data. The record provides insufficient information, however, about the impact of allowing such a reset of jurisdictional allocation factors or about how best to implement such a reset. Moreover, requiring all rate-of-return carriers to reset their jurisdictional allocation

factors would impose substantial burdens on small rural carriers. And requiring or allowing all rate-of-return carriers to reset their jurisdictional allocation factors would impose a substantial burden on NECA and the Commission in reviewing such changes. Some commenters support other modifications to the separations freeze, such as giving carriers the opportunity to unfreeze and then refreeze their category relationships. The Commission agrees with NECA, however, that allowing companies to unfreeze and then refreeze their category relationships would risk gamesmanship, a risk that the Commission cannot adequately address on the current record. Indeed, the record lacks sufficient information to accurately assess the benefits and drawbacks of making changes to the separations freeze, other than to the category relationships freeze.

36. *Implementation of the Unfreeze.* The Commission adopts the suggestion that carriers that file their own tariffs and unfreeze their category relationships be required to update their part 36 category relationships in new cost studies on which their interstate tariffed rates, other than switched access rates, will be based going forward, beginning with the 2019 annual filing. Rate-of-return carriers subject to §§ 61.38 and 61.39 of the Commission's rules shall explain the impact of the unfreeze and describe these studies in the "Description & Justification" sections of their filings. Carriers subject to § 61.38 shall include the results of these studies in their tariff review plans. Carriers subject to § 61.39 are not required to submit the supporting data at the time of filing, but the Commission and interested parties may request the data. NECA carriers that elect to unfreeze their category relationships must reflect these unfrozen relationships in the cost studies on which their pool settlements are based beginning with the last six months of studies for calendar year 2019.

37. The Commission concludes, consistent with the view of nearly all commenters addressing the issue, that it should take steps to prevent double-recovery of costs. Unfreezing separations category relationships could result in a carrier's recovery of the same costs through higher business data services rates and unchanged switched access recovery. Updated category relationships will change the costs assigned to common line, to interstate switched access, and to business data services. The *USF/ICC Transformation Order* capped all interstate switched access rates at 2011 levels, subject to

specified reductions over time. The Commission does not with this action make changes to the carefully-balanced transition to bill-and-keep set forth in that *Order*. Unless cost reductions to interstate switched access are reflected in a carrier's revised base period revenue, however, a carrier will over-recover costs through its capped interstate switched access rates.

38. To prevent this over-recovery, the Commission follows the approach it took in the *Rate-of-Return Business Data Services Order*. There, the Commission adopted a method similar to the approach the Bureau followed in waiving the category relationships freeze in the *Eastex Waiver Order*, which commenters generally agree is a reasonable approach to prevent double-recovery. Thus, a carrier subject to § 61.38 or § 61.39 of the Commission's rules must calculate the difference between the interstate switched access costs in two cost studies—one based on unfrozen category relationships that is the basis for its tariff-year 2019–2020 rates and a second study that is the same except that it is based on frozen category relationships. Each carrier must then adjust its base period revenue by an amount equal to the interstate switched access cost difference between the two cost studies before applying the annual 5% reduction to the base period revenue, as required by the *USF/ICC Transformation Order*.

39. A carrier that participates in the NECA interstate switched access tariff must report to NECA the interstate switched access cost difference between the two calendar year 2018 studies and its base period revenue as revised to reflect the cost difference. These procedures protect both carriers and customers from any unintended consequences of unfreezing category relationships. Finally, the Commission requires NECA to reflect these base period revenue changes in its settlement procedures.

40. The Commission finds that these measures provide a reasonable and not unduly burdensome method for preventing double-recovery of costs when a carrier chooses to unfreeze its category relationships. Each carrier will need to perform detailed calculations to implement its choice to update category relationships. Because the Commission has an obligation to protect ratepayers against the harms of double-recovery, the Commission rejects ITTA's assertion that the procedure carriers are required to follow to prevent double-recovery is too burdensome, particularly since ITTA poses no alternative.

C. Declining To Alter the Scope of the Referral

41. The Commission declines to alter the scope of the referral to the Joint Board, and instead asks the Joint Board to adopt an incremental approach to separations reform by focusing first on cleaning up the existing separations rules and then on long-term steps toward comprehensive reform of the remaining rules. As previously articulated by the Commission, those issues include whether the separations rules are still needed, whether specific separations categories should be consolidated or disaggregated, and how certain types of costs should be allocated between the jurisdictions. Although the Commission has never retreated from its goal of comprehensive separations reform, over the years it has asked the Joint Board to focus on certain specific issues within that broad area. Most recently, the Commission referred to the Joint Board the harmonization of the Commission's part 32 jurisdictional separations rules with previous amendments to its part 32 accounting rules and asked the Joint Board to issue a recommended decision on that matter. The Joint Board issued its Recommended Decision eight months after receiving that referral; and, after seeking public comment on the Joint Board's recommendations, the Commission amended its separations rules consistent with those recommendations.

42. Therefore, rather than narrowing the scope of the separations reform referral, the Commission believes that the best course is to ask the Joint Board to focus on certain discrete issues in the short term. First, should the Commission amend the separations rules to recognize that price cap carriers and rate-of-return carriers that have adopted the new incentive regulation framework for their business data services offerings are not subject to them—an action that would recognize the Commission's forbearance from application of the separations rules to these carriers? Second, given that the separations rules apply only to certain rate-of-return carriers and only for certain purposes, are there rules or recordkeeping requirements that the Commission should modify or eliminate in light of the freeze extension of up to six years? In highlighting these issues, the Commission hopes to draw on the Commission's recent experience with the Joint Board in amending the part 36 separations rules to harmonize them with changes in the part 32 accounting rules.

43. Longer term, the Commission continues to seek the Joint Board's recommendations on how the Commission might replace the existing jurisdictional separations process with a simplified system for reasonably allocating costs between the interstate and intrastate jurisdictions. The Commission agrees with NARUC that the existing separations rules, which presume circuit-switched, primarily voice networks, require updating to reflect today's network configurations and mix of broadband, video, and voice services. The Commission also shares NARUC's and the Irregulars' concern that those rules necessarily misallocate network costs. The Commission knows that any changes to the separations rules will need to be harmonized with the Commission's reforms to the universal service, intercarrier compensation, and business data services rules. Indeed, the Commission extends the separations freeze for up to six years to free resources to address these and other long-term separations problems. The Commission looks forward to working with the Joint Board in a more directed manner, addressing these important issues step-by-step. By addressing the separations procedures in a concerted fashion—through substantive reforms of the universal service, intercarrier compensation, and business data services rules on one hand, and focused revisions of specific areas in the separations rules on the other—the Commission hopes to resolve the complex separations issues that have proven so challenging well before the end of the maximum six-year extension period.

D. Consistency With the Communications Act

44. The Commission rejects NARUC's assertion that because it did not refer or receive a recommended decision from the Joint Board on the specific proposal to extend the freeze for 15 years, and because it did not receive a recommended decision from the Joint Board on allowing carriers subject to the category relationships freeze the opportunity to update their category relationships, the Commission is violating section 410(c) of the Communications Act. In so arguing, NARUC ignores the fact that the Commission has twice referred comprehensive separations reform to the Joint Board. The Joint Board clearly understood that these referrals encompassed a separations freeze; otherwise it would have sought an additional referral before recommending the initial freeze. Moreover in 2009, the Commission referred the specific

question of whether to allow carriers subject to the category relationships freeze the opportunity to unfreeze those relationships. The Joint Board has never come to a recommended decision on the latter referral, and the only Recommended Decision the Joint Board has issued addressing any part of either comprehensive reform referral was the decision the Joint Board issued in 2000 recommending a separations freeze. Following the Joint Board recommendation, the Commission adopted the separations freeze and recognized that it might need to extend the freeze if comprehensive reform were not completed before the freeze expired.

45. Because the Commission has not completed comprehensive reform, consistent with the Commission's 2001 *Separations Freeze Order*, the Commission has extended the separations freeze seven times without an additional referral to, or receiving an additional recommended decision from, the Joint Board. The first time the Commission extended the freeze it explicitly found that the extension was within the scope of the Joint Board's previous recommendation. NARUC's assertion that the Commission found in 2001 that it would be required to receive a specific recommendation from the Joint Board on each extension of the separations freeze is plainly wrong. The Commission committed to consulting with the Joint Board on extensions of the initial five-year freeze; it did not commit to referring freeze extensions to the Joint Board. For their part, State members of the Joint Board have repeatedly submitted letters supporting the freeze extensions; and, as part of this proceeding, the current State members recommend that the Commission extend the separations freeze for up to six years and allow carriers a one-time opportunity to unfreeze their category relationships.

46. In its comments, NARUC attempts to distinguish the proposed 15-year freeze from earlier, shorter freeze extensions by arguing that a freeze of up to 15 years is the "policy equivalent" of a permanent freeze. The Commission's decision to extend the freeze for only six years should alleviate NARUC's concern. Moreover, the Commission's decision to extend the freeze for up to six years is consistent with the recommendation of the State members of the Joint Board and informed by the record of this proceeding and by the Joint Board's failure to reach a recommendation on comprehensive reform for the last 21 years. Furthermore, the freeze the Commission adopts today is not permanent; it will

expire on a date certain absent further action by the Commission.

47. Regarding the Commission's 2001 pledge to "consult[] with the Joint Board" to "determine whether the freeze period shall be extended," the notice and comment and ex parte periods for the *Further Notice* provided ample opportunity for the Joint Board, including its State members, to voice their opinions on the extension. The State members of the Joint Board have taken the opportunity to engage in extensive discussions with all the other Joint Board members. These discussions meet any obligation the Commission may have under section 410(c) to afford the State members of the Joint Board an opportunity to participate in the Commission's deliberations on this Report and Order.

48. Moreover, given the lack of action by the Joint Board on the Commission's two referrals of comprehensive reform and separate referral of an unfreeze of the category relationships and the recommendations of the State Joint Board members, the Commission's actions today are necessary and appropriate. Section 410(c) directs that, after a referral, the Joint Board "shall prepare a recommended decision for prompt review and action by the Commission." Nothing in section 410(c) obligates the Commission to wait indefinitely for a recommended decision before acting. The Commission concludes that the only reasonable interpretation of the statutory language allows the Commission to act unilaterally where, as here, issues have been pending before the Joint Board for many years without a recommended decision. Any contrary interpretation would allow the Joint Board to indefinitely delay Commission action. Congress could not have intended that result while requiring that the Commission act promptly once the Joint Board issues a recommended decision.

49. Reducing the length of the freeze extension should also alleviate NARUC's concern that extending the freeze for up to 15 years would result in unjust and unreasonable rates because of the frozen allocation of the underlying costs to the interstate and intrastate jurisdictions. A freeze extension of up to six years will free up resources to address whether the separations rules produce reasonable results within the meaning of section 201(b) of the Communications Act and determine the proper methodology if the rules need to be revised. This is no easy undertaking, given the need to ensure that any changes to the separations rules are consistent with the Commission's high-cost universal service and

intercarrier compensation rules. Although the Commission agrees with NARUC on the need for separations reform, it finds that extending the freeze for up to six years will accelerate that reform. Accordingly, the Commission finds that a freeze extension of up to six years, in combination with a one-time option to unfreeze category relationships, will increase the Commission's and the Joint Board's ability to ensure just and reasonable rates.

IV. Procedural Matters

50. *Paperwork Reduction Act Analysis.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis below.

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

52. *Final Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980 requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in part V, below.

53. *Effective Date.* The Commission finds good cause to make the extension of the separations freeze effective immediately upon publication of a summary of the Report and Order in the **Federal Register**. The current freeze

expired on December 31, 2018. To avoid unnecessary disruption to carriers subject to the separations rules, the Commission preserves the status quo by making the extension of the freeze effective upon publication.

V. Final Regulatory Flexibility Analysis

54. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) on the possible significant economic impact on small entities by the Report and Order. An Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Further Notice of Proposed Rulemaking*. The Commission sought written public comment on the proposals in this rulemaking proceeding, including comment on the IRFA. The Commission did not receive comments on the IRFA.

A. Need for, and Objectives of, the Order

55. The Commission's part 36 jurisdictional separations rules originated more than 30 years ago when the Commission and its State counterparts used costs to set rates, and the rules were designed to help prevent local exchange carriers (LECs) from recovering the same costs from both the interstate and intrastate jurisdictions. In 1997, the Commission initiated a proceeding to comprehensively reform those rules in light of the statutory, technological, and marketplace changes that had affected the telecommunications industry. In 2001, the Commission, pursuant to a recommendation by the Federal-State Joint Board on Jurisdictional Separations (Joint Board), froze the part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. The Commission has extended the freeze seven times, with the most recent extension expiring on December 31, 2018. The deadline compelled the Commission to make a choice between extending the freeze further or allowing long-unused separations rules to take effect on January 1, 2019.

56. The Commission finds that not extending the freeze would impose significant burdens on rate-of-return carriers that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001. Accordingly, the Report and Order extends for up to six years the freeze of part 36 category relationships and jurisdictional cost allocation factors that

the Commission adopted in the *2001 Separations Freeze Order* and subsequently extended until December 31, 2018. This additional extension will begin upon publication of the Order in the **Federal Register**, and will continue until the earlier of December 31, 2024, or the completion of comprehensive reform of the part 36 jurisdictional separations rules.

57. Also, in the *2001 Separations Freeze Order*, the Commission granted rate-of-return carriers a one-time option to freeze their category relationships. Carriers that chose to freeze their category relationships in 2001 assign costs within part 32 accounts to categories using their separations category relationships from 2000. Consequently, these companies are still separating their costs based on the technologies and services that were in place in 2000, instead of being able to adjust the amounts assigned to separations categories to reflect the current network costs and services.

58. In the *Rate-of-Return Business Data Services Order*, the Commission allowed carriers subject to the category relationships freeze that receive model-based and other forms of fixed high-cost support and elect incentive regulation for business data services to opt out of that freeze and update their category relationships. In this Report and Order, the Commission grants all other rate-of-return carriers operating under that freeze the opportunity to opt out of it—enabling carriers to better recover network upgrade costs from ratepayers that benefit from those upgrades and to take greater advantage of universal service programs that incent broadband deployment.

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

59. There were no comments that specifically addressed the proposed rules and policies presented in the IRFA that was part of the *Further Notice*.

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

60. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

61. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

62. *Incumbent Local Exchange Carriers.* The rules adopted in this Report and Order affect the tariffed rates for interstate regulated services for incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC’s Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted in this proceeding.

63. The Commission has included small incumbent LECs in this RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. Because the Commission’s proposals concerning the part 36 rules will affect all incumbent LECs, some entities employing 1,500 or fewer employees may be affected by the rule changes adopted in the Report and

Order. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

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

64. None. Carriers are not required to unfreeze their category relationships. Even if they choose to do so, affected carriers may adjust their category relationships in cost studies that generally are conducted prior to filing tariffed rates.

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

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

66. The jurisdictional freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1,500 employees or fewer, to complete certain annual separations studies that otherwise would be required by the Commission’s rules. Thus, an extension of this freeze avoids increasing the administrative burden of regulatory compliance for rate-of-return incumbent LECs, including small incumbent LECs.

67. Presently, rate-of-return carriers in a limited number of study areas operate under the category relationships freeze. When the Commission granted rate-of-return carriers the opportunity to elect the category relationships freeze, it specified the freeze would be an interim, “transitional measure” lasting no more than five years. But, the freeze has now lasted 17 years, and carriers that elected it are prohibited from withdrawing from that election. In the Report and Order, the Commission grants affected carriers the opportunity to voluntarily opt out of this freeze, rather than requiring carriers to do so. The Commission recognizes that the size, cost structures, and investment patterns of these carriers vary widely,

and therefore enables an individual carrier to decide for itself whether the economic benefits of unfreezing its category relationships outweigh any costs. The Commission therefore certifies that this Report and Order will not have a significant economic impact on a substantial number of small entities.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rules

68. None.

H. Report to Congress

69. The Commission will send a copy of the Report and Order, including the FRFA, to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Ordering Clauses

70. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, this Report and Order *is adopted*.

71. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and part 36 of the Commission’s rules, 47 CFR part 36, *is amended* as set forth in the Final Rules below.

72. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, except as otherwise provided in this Report and Order, the amendments to 47 CFR part 36 set forth in the Final Rules below shall be effective on the date of publication of a summary of the Report and Order in the **Federal Register**.

73. *It is further ordered* that the amendments to 47 CFR 36.3(b) specified below in the Final Rules, which may contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act, *will become effective* after OMB review, on the effective date specified in a document

that the Commission will publish in the Federal Register announcing such effective date.

74. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

75. It is further ordered that the Commission shall send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Standard procedures for separating telecommunications property costs, revenues, expenses, taxes and reserves for telecommunications companies, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

■ 2. Revise § 36.3(b) to read as follows:

§ 36.3 Freezing of jurisdictional separations category relationships and/or allocation factors.

* * * * *

(b) Effective July 1, 2001, through December 31, 2024, local exchange carriers subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign costs from the accounts under part 32 of this chapter (part 32 account(s)) to the separations categories/sub-categories, as specified herein, based on the percentage relationships of the categorized/sub-categorized costs to their associated part 32 accounts for the

twelve-month period ending December 31, 2000. If a part 32 account for separations purposes is categorized into more than one category, the percentage relationship among the categories shall be utilized as well. Local exchange carriers that invest in types of telecommunications plant during the period July 1, 2001, through December 31, 2024, for which it had no separations category investment for the twelve-month period ending December 31, 2000, shall assign such investment to separations categories in accordance with the separations procedures in effect as of December 31, 2000. Local exchange carriers not subject to price cap regulation, pursuant to § 61.41 of this chapter, may elect to be subject to the provisions of this paragraph (b). Such election must be made prior to July 1, 2001. Any local exchange carrier that is subject to § 69.3(e) of this chapter and that elected to be subject to this paragraph (b) may withdraw from that election by notifying the Commission by May 1, 2019, of its intent to withdraw from that election, and that withdrawal will be effective as of July 1, 2019. Any local exchange carrier that participates in an Association tariff, pursuant to §§ 69.601 through 69.610 of this chapter, and that elected to be subject to this paragraph (b) may withdraw from that election by notifying the Association by March 1, 2019, of such intent. Subject to these two exceptions, local exchange carriers that previously elected to become subject to this paragraph (b) shall not be eligible to withdraw from such regulation for the duration of the freeze.

* * * * *

§ 36.126 [Amended]

■ 3. Amend § 36.126(b)(5) by removing the date "June 30, 2014" and adding in its place "December 31, 2024."

§§ 36.3, 36.123, 36.124, 36.125, 36.126, 36.141, 36.142, 36.152, 36.154, 36.155, 36.156, 36.157, 36.191, 36.212, 36.214, 36.372, 36.374, 36.375, 36.377, 36.378, 36.379, 36.380, 36.381, 36.382 [Amended]

■ 4. In addition to the amendments set forth above, in 47 CFR part 36, remove the date "December 31, 2018" and add in its place everywhere it appears the date "December 31, 2024" in the following places:

- a. Section 36.3(a), (c), (d) introductory text, and (e);
■ b. Section 36.123(a)(5) and (6);
■ c. Section 36.124(c) and (d);
■ d. Section 36.125(h) and (i);
■ e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
■ f. Section 36.141(c);
■ g. Section 36.142(c);

- h. Section 36.152(d);
■ i. Section 36.154(g);
■ j. Section 36.155(b);
■ k. Section 36.156(c);
■ l. Section 36.157(b);
■ m. Section 36.191(d);
■ n. Section 36.212(c);
■ o. Section 36.214(a);
■ p. Section 36.372;
■ q. Section 36.374(b) and (d);
■ r. Section 36.375(b)(4) and (5);
■ s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
■ t. Section 36.378(b)(1);
■ u. Section 36.379(b)(1) and (2);
■ v. Section 36.380(d) and (e);
■ w. Section 36.381(c) and (d); and
■ x. Section 36.382(a).

[FR Doc. 2019-01721 Filed 2-14-19; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS-2019-0003]

RIN 0750-AK46

Defense Federal Acquisition Regulation Supplement; Appendix A, Armed Services Board of Contract Appeals, Part 1—Charter

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing the updated Charter of the Armed Services Board of Contract Appeals (ASBCA), dated April 9, 2018. The ASBCA is chartered to serve as the authorized representative of the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force in hearing, considering, and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities regarding claims on contracts under the Contract Disputes Act of 1978 or other remedy-granting provisions.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, Telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

This publication of Appendix A of the Defense Federal Acquisition Regulation

Supplement (DFARS) updates the Charter of the ASBCA from the most recent prior version, dated May 14, 2007, to its latest version, dated April 9, 2018. The updated Charter implements changes to ASBCA internal administration to better support the Board's mission of hearing, considering, and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. In addition to minor administrative changes and a rearranging of paragraphs to improve the logical flow of the document and add clarity, the following substantive changes were made to the Charter:

- References to "Under Secretary of Defense for Acquisition, Technology and Logistics" were changed to "Under Secretary of Defense responsible for acquisition."
- Former paragraph 4 (new paragraph 3) was shortened to clearly state the Board Chairman's broad powers and responsibilities and to remove detailed processes deemed not appropriate for this type of document.
- The requirement for the Board to forward quarterly reports of the Board's proceedings to various Defense officials was removed. The requirement for annual reports was retained.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule only publishes the updated ASBCA charter and is therefore not required to be published for public comment, because the rule does not have a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and

Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771 regulatory action, because this rule concerns regulations related to agency organization, management, or personnel.

III. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

V. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Appendix A

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, DoD is amending 48 CFR appendix A to chapter 2 as follows:

Appendix A to Chapter 2—Armed Services Board of Contract Appeals

- 1. The authority citation for 48 CFR appendix A to chapter 2 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

- 2. Appendix A is amended by revising the introductory text and Part 1—Charter to read as follows:

Appendix A to Chapter 2—Armed Services Board of Contract Appeals

* * * * *

Armed Services Board of Contract Appeals

Approved 1 May 1962
Revised 1 May 1969
Revised 1 September 1973
Revised 1 July 1979
Revised 14 May 2007
Revised 9 April 2018

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sections 7101–7109), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department or their authorized representative has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement as permitted by law. The Board shall operate under general policies established or approved by the Under Secretary of Defense responsible for acquisition and may perform other duties as directed not inconsistent with the Contract Disputes Act of 1978. The Board shall decide the matters before it independently.

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from the Judges of the Board a Chairman and two or more Vice Chairmen. Appointment of the Chairman and Vice Chairmen and other Judges of the Board shall be made by the Under Secretary of Defense responsible for acquisition, the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition. The Chairman may designate a Judge of the Board to serve as an Acting Chairman or Acting Vice Chairman.

3. The Chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. The Chairman shall have authority to establish procedures for the issuance of Board decisions. The Chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by a Senior Deciding Group established by the Chairman which shall have the authority to overturn prior Board precedent.

4. It shall be the duty and obligation of the Judges of the Armed Services Board of Contract Appeals to decide appeals on the

record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

5. Any Judge of the Board or any examiner, designated by the Chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument. A Judge of the Board shall have authority to administer oaths and issue subpoenas as specified in the Contract Disputes Act of 1978. In cases of contumacy or refusal to obey a subpoena, the Chairman may request orders of the court in the manner prescribed in the Contract Disputes Act of 1978.

6. The Board shall have all powers necessary and incident to the proper performance of its duties. The Board has the authority to issue methods of procedure and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. The Chairman shall provide within approved ceilings for the staffing of the Board with non-Judge personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The Chairman shall appoint a Recorder of the Board. All personnel shall be responsible to and shall function under the direction, supervision and control of the Chairman.

8. The Board will be serviced by the Department of the Army for administrative support as required for its operations. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Under Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. Within 30 days following the close of a fiscal year, the Chairman shall forward a report of the Board's transactions and proceedings for the preceding fiscal year to the Under Secretary of Defense responsible for acquisition, the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective April 9, 2018.

APPROVED:

(signed) Ellen M. Lord (9 April 2018),
Under Secretary of Defense (Acquisition & Sustainment).

(signed) William S. Castle,

Acting General Counsel of the Department of Defense.

(signed) Dr. Bruce D. Jette,
Assistant Secretary of the Army (Acquisition, Logistics & Technology).

(signed) James F. Geurts,
Assistant Secretary of the Navy (Research, Development & Acquisition).

(signed) Dr. Will Roper,
Assistant Secretary of the Air Force (Acquisition).

* * * * *

[FR Doc. 2019-02531 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

[Docket DARS-2018-0038]

RIN 0750-AJ45

Defense Federal Acquisition Regulation Supplement: Antiterrorism Training Requirements for Contractors (DFARS Case 2017-D034)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirement for contractors to complete Level I antiterrorism awareness training.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Trujillo, telephone 571-372-6102.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 42820 on August 24, 2018, to revise the DFARS to implement the antiterrorism training requirements for contractors provided in DoD Instruction (DoDI) O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards (available at <http://www.esd.whs.mil/Directives/issuances/dodi/>). The rule will ensure contractors, who as a condition of contract performance require routine physical access to a Federally-controlled facility or military installation, are aware of the requirement for contractor personnel to complete Level I DoD antiterrorism awareness training. Routine physical access is considered more than intermittent access, such as when a

contractor employee is required to obtain a Common Access Card. The training is required within 30 days of requiring access and annually thereafter and must be completed either through DoD-sponsored and certified computer or web-based distance learning instruction, or under the instruction of a qualified Level I antiterrorism awareness instructor.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule with regard to public comments; however, there are some minor editorial revisions incorporated. The definition of "military installation" at DFARS 204.7201, Definitions, and the clause at 252.204-7004, DoD Antiterrorism Awareness Training for Contractors, is updated to reflect more precisely the statutory definition at 10 U.S.C. 2801(c)(4) to address activities in a foreign country. Additionally, the clause is updated to reflect the current secured weblink of <https://jko.jten.mil/> for information and guidance pertaining to the DoD antiterrorism awareness training. These minor editorial updates are administrative and have no effect on the public.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule creates a new DFARS clause 252.204-7004, Antiterrorism Awareness Training for Contractors, to advise DoD contractors of the requirement for its employees (and those of its subcontractors, if applicable) to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter, if, as a condition of contract performance require routine physical access to a Federally-controlled facility or a military installation. DoD plans to apply this clause to solicitations and contracts below the simplified acquisition threshold and to the procurement of commercial items, including commercially available off-the-shelf items (as defined in Federal Acquisition Regulation 2.101). This is necessary in order to reach as wide an audience as possible to ensure contractor personnel who are required to have routine physical access to a Federally-controlled facility or military installation are aware of this training requirement.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary to implement the requirements of DoD Instruction O–2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, to ensure that contractors complete Level I antiterrorism awareness training. The objective of this final rule is to ensure contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are aware of terrorism threats and the proper responses to threat actions. In recent years, there have been terrorist events directed at Federally-controlled facilities and military installation and all personnel that routinely access those facilities need to be aware of the threat.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

It is expected that contracts that contain the clause at Federal Acquisition Regulation (FAR) 52.204–9, Personal Identity Verification of Contractor Personnel, are contracts that would require contractor personnel to have routine physical access to Federally-controlled facilities or military installations. According to data available in the Electronic Data Access system, in fiscal year 2017, DoD awarded 137,106 contracts containing the clause at FAR 52.204–9 to 15,814 businesses, of which 10,837 (68.5 percent) were to small businesses. Common Access Cards (CAC) are issued

to contractors who require routine physical access to a Federally-controlled facility or military installation. There are currently 507,665 contractors that hold CAC cards.

The rule does not impose any reporting or recordkeeping requirements.

There are no known alternative approaches that would accomplish the stated objectives. The impact is not expected to be significant, because current contractor employees who hold a CAC have already completed the requisite training and the cost of training new contractor personnel is at the expense of the Department. The time allotted for the training is approximately two hours per year. The training will provide safety awareness and precautionary measures that will benefit contractor personnel requiring routine physical access to a Federally-controlled facilities or military installations. This awareness not only benefits the contractor personnel, but also DoD civilians, military, and its assets.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

- 2. Add subpart 204.72, consisting of 204.7200 through 204.7203, to read as follows:

SUBPART 204.72—ANTITERRORISM AWARENESS TRAINING

Sec.

- 204.7200 Scope of subpart.
- 204.7201 Definition.
- 204.7202 Policy.
- 204.7203 Contract clause.

Subpart 204.72—Antiterrorism Awareness Training

204.7200 Scope of subpart.

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

204.7201 Definition.

As used in this subpart—

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

204.7202 Policy.

It is DoD policy that—

(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter; and

(b) In accordance with Department of Defense Instruction O–2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

204.7203 Contract clause.

Include the clause at 252.204–7004, DoD Antiterrorism Awareness Training for Contractors, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when contractor personnel require routine physical access to a Federally-controlled facility or military installation.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

- 3. Amend section 212.301 by—
 - a. Redesignating paragraphs (f)(ii)(A) through (F) as paragraphs (f)(ii)(B) through (G), respectively; and
 - b. Adding new paragraph (f)(ii)(A).

The addition reads as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(A) Use the clause at 252.204–7004, Antiterrorism Awareness Training for Contractors, as prescribed in 204.7203.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.204–7004 to read as follows:

252.204–7004 Antiterrorism Awareness Training for Contractors.

As prescribed in 204.7203, use the following clause:

Level I Antiterrorism Awareness Training for Contractors (FEB 2019)

(a) *Definition.* As used in this clause—
Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

(b) *Training.* Contractor personnel who require routine physical access to a Federally-controlled facility or military installation shall complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter. In accordance with Department of Defense Instruction O–2000.16 Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training shall be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a Level I antiterrorism awareness instructor.

(c) *Additional information.* Information and guidance pertaining to DoD antiterrorism awareness training is available at <https://jko.jten.mil/> or as otherwise identified in the performance work statement.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts, including subcontracts for commercial items, when subcontractor performance requires routine physical access to a Federally-controlled facility or military installation.

(End of clause)

[FR Doc. 2019–02525 Filed 2–14–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 215, 234, and 235

[Docket DARS–2018–0053]

RIN 0750–AJ83

Defense Federal Acquisition Regulation Supplement: Amendments Related to General Solicitations (DFARS Case 2018–D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2018, which expand the definition of “competitive procedures” in 10 U.S.C. 2302 and extend the term and increase the dollar value under the contract authority for advanced development of initial or additional prototype units.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 54698 on October 31, 2018, to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91).

Section 221 amends 10 U.S.C. 2302(2)(B) to allow for an expanded application of other competitive procedures by replacing the words “basic research” with “science and technology”. “Competitive procedures” were defined in 10 U.S.C. 2302(2)(B) to include “the competitive selection for award of basic research proposals resulting from a general solicitation, and the peer review or scientific review (as appropriate) of such proposals.” Changing the words “basic research” to “science and technology” expands the meaning of other competitive procedures to apply to “advanced technology development” and “advanced component development and prototypes” research proposals, in addition to “basic research” and “applied research” proposals. One of the solicitation methods for research and development proposals, a broad agency announcement (BAA), is defined

in the Federal Acquisition Regulation (FAR) as “a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs.” Section 221 permits the use of BAAs for competitive selection of science and technology proposals by authorizing the use of the competitive procedures at 10 U.S.C. 2302(2)(B) that result from a general solicitation and peer or scientific review of such proposals—a key element of the BAA process.

Section 861 amends 10 U.S.C. 2302e to allow for an extended term limit and increased dollar threshold under the contract authority for advanced development of initial or additional prototype units awarded from a competitive selection, as specified in 10 U.S.C. 2302(2)(B). The statutory term limit extends from 12 months to 2 years and the dollar threshold increases from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e). Section 861 also amends 10 U.S.C. 2302e to repeal the obsolete authority implemented by section 819 of the NDAA for FY 2010 (Pub. L. 111–84), thereby eliminating the expiration date of the authority.

One respondent submitted a public comment on the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment received and any changes made to the rule is provided as follows:

A. Summary of Significant Changes

DoD did not make any changes to the proposed rule as a result of the public comment.

B. Analysis of Public Comment

Comment: The respondent recommended the proposed rule update 213.106–1(b) to address documentation requirements related to competition for actions not exceeding the simplified acquisition threshold (SAT).

Response: Since there is no DFARS 213.106–1(b) section, DoD reviewed FAR 13.106–1(b), Soliciting Competition, which allows contracting officers to solicit from a single source, for purchases not exceeding the SAT, if the contracting officer determines that circumstances deem only one source reasonably available. This rule relates to soliciting proposals using other competitive procedures (such as a broad agency announcement) and is not related to solicitations of a single source for purchases not exceeding the SAT;

therefore, DoD determined that the public comment is outside the scope of this rule.

C. Other Changes

One minor editorial change is made to the final rule. DoD compared the proposed rule to the current version of the DFARS text and noted the need to correct a typo at DFARS 215.371-4(a) by changing the word “sections” to “section”.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule proposes to amend the DFARS to implement sections 221 and 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018.

Section 221 expands the definition of “competitive procedures” at 10 U.S.C. 2302(2)(B) by removing the term “basic research” and adding “science and technology” in its place. Section 861 implements a statutory modification to 10 U.S.C. 2302e to extend the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units

from 12 months to 2 years and from \$20 million to \$100 million in fiscal year 2017 constant dollars (10 U.S.C. 2302e), respectively. The modification also repeals the obsolete authority of section 819 of the NDAA for FY 2010 (Pub. L. 111-84), thereby eliminating the expiration date of September 30, 2019, for the contract authority for advanced development of initial or additional prototype units.

The objective of this rule is to implement sections 221 and 861 to establish broad agency announcements as a competitive procedure that may be used to select science and technology proposals and to expand the term limit and dollar threshold for the contract authority for advanced development of initial or additional prototype units. This rule impacts internal Government procedures by expanding the meaning of other competitive procedures to include the competitive selection of science and technology proposals and expands the contract authority for advanced development of initial or additional prototype units.

There were no public comments concerning the initial regulatory flexibility analysis.

In FY 2017, DoD awarded 1,853 contracts for research and development, excluding Small Business Innovation Research (SBIR) and Small Technology Transfer Research (STTR) program requirements. Approximately 53% of those new contract actions were awarded to 1,005 of unique small business and nontraditional DoD entities. There were 2,858 new contract awards for SBIR and STTR program requirements for DoD. Approximately 66% of those new contract actions were awarded to 1,891 of unique small business and nontraditional DoD entities.

This final rule does not include any new reporting or recordkeeping requirements for small entities.

There are no known significant alternative approaches to the final rule that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 206, 215, 234, and 235

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 206, 215, 234, and 235 are amended as follows:

■ 1. The authority citation for 48 CFR parts 206, 215, 234, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Subpart 206.1, consisting of 206.102, is added to read as follows:

Subpart 206.1—Full and Open Competition

206.102 Use of competitive procedures.

(d) *Other competitive procedures.*
(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016(a) (10 U.S.C. 2302(2)(B)).

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Section 215.371-4 is amended by revising paragraph (a)(4) to read as follows:

215.371-4 Exceptions.

(a) * * *
(4) Acquisitions of science and technology, as specified in 235.016(a);
or
* * * * *

PART 234—MAJOR SYSTEM ACQUISITION

■ 4. Section 234.005-1 is amended by—
■ a. Removing paragraph (2);
■ b. Redesignating paragraph (1) and (1)(i) through (iii) as introductory text and paragraphs (1), (2), and (3), respectively;
■ c. In the newly redesignated introductory text, removing “general solicitation” and adding “broad agency announcement” in its place;
■ d. In the newly redesignated paragraph (2) removing “12 months” and adding “2 years” in its place; and
■ e. Revising the newly redesignated paragraph (3) to read as follows:

234.005-1 Competition.

* * * * *

(3) The dollar value of the work to be performed pursuant to the contract line

item or contract option shall not exceed \$100 million in fiscal year 2017 constant dollars. (10 U.S.C. 2302e)

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 5. Section 235.006–71 is amended by—

■ a. Redesignating the introductory text as paragraph (b); and

■ b. Adding paragraph (a).

The addition reads as follows:

235.006–71 Competition.

(a) Use of a broad agency announcement with peer or scientific review for the award of science and technology proposals in accordance with 235.016(a) fulfills the requirement for full and open competition (see 206.102(d)(2)).

* * * * *

■ 6. Section 235.016 is added to read as follows:

235.016 Broad agency announcement.

(a) *General.* A broad agency announcement with peer or scientific review may be used for the award of science and technology proposals. Science and technology proposals include proposals for the following:

- (i) Basic research (budget activity 6.1).
- (ii) Applied research (budget activity 6.2).
- (iii) Advanced technology development (budget activity 6.3).
- (iv) Advanced component development and prototypes (budget activity 6.4).

[FR Doc. 2019–02527 Filed 2–14–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 211

[Docket DARS–2018–0021]

RIN 0750–AJ23

Defense Federal Acquisition Regulation Supplement: Use of Commercial or Non-Government Standards (DFARS Case 2017–D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for

Fiscal Year 2017 by encouraging offerors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military or Government-unique specifications and standards.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 30644 on June 29, 2018, to implement section 875(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328), which requires DoD to revise the DFARS to encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military or Government-unique specifications and standards. Four respondents submitted comments on the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments received and any changes made to the rule are provided as follows:

A. Summary of Significant Changes

There were no changes from the proposed rule made in the final rule as a result of the public comments.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Two respondents provided support for the proposed rule.

Response: DoD acknowledges the support for the rule.

2. Section 875 Implementation

Comment: Several respondents shared concerns with DoD's implementation of section 875 of the NDAA for FY 2017, regarding how standards would be added to the Acquisition Streamlining and Standardization Information System (ASSIST) database in order to implement the statutory requirements. The respondents also recommended revisions to the rule to allow contractors to propose equally effective standards and supporting data for reliance upon standards that meet the intent of the Government's requirements and to require the Government to determine that a commercial or non-Government requirement does not meet a military specification or standard.

Response: Maintenance of the ASSIST database is beyond the scope of this

rule. Questions regarding standards and the ASSIST database should be directed to the Defense Standardization Program Office. Contact information is available at <https://www.dsp.dla.mil/Contact-Us1/>. Removing the prohibition at DFARS 211.107(b) on DoD using Federal Acquisition Regulation (FAR) 52.211–7, Alternatives to Government-Unique Standards, allows offerors to propose standards as alternatives, as intended. The language in the rule meets the intent of the statute at section 875(c) of the NDAA for FY 2017.

3. ASSIST Database Instructions

Comment: One respondent supported the use of the ASSIST database as a repository of voluntary consensus standards adopted by DoD and recommended additional instructions and clarification on how non-Government standards are selected for inclusion in the database.

Response: Maintenance or modification of the ASSIST database is beyond the scope of this rule. Questions regarding standards and the ASSIST database should be directed to the Defense Standardization Program Office. Contact information is available at <https://www.dsp.dla.mil/Contact-Us1/>.

4. Applicability

Comment: Three respondents were concerned by the limitation on applicability of section 875 of the NDAA for FY 2017 requirements to contracts over the simplified acquisition threshold (SAT) and noncommercial contracts.

Response: Section III of this final rule preamble clarifies that the rule does not exclude solicitations for contracts valued at or below the SAT. No change to the text of the rule is required, since the proposed rule did not include a limitation to contracts valued above the SAT in the clause prescription. This rule, however, is not applicable to commercial contracts, including COTS, since Government- or military-unique specifications and standards should not be used in commercial contracts.

5. Use of FAR Provision 52.211–7

Comment: One respondent was concerned that the existing solicitation provision at FAR 52.211–7, Alternatives to Government-Unique Standards, uses a different standard in determining whether the standard proposed by the contractor is acceptable. The respondent was also concerned the rule required burden of proof from the contractor to demonstrate the contractor's proposed standard meets the Government's requirement.

Response: Although the statute uses the phrase “encourage contractors to propose commercial or non-Government standards and industry-wide practices that meet the intent of the military specifications and standards,” DoD retains the responsibility to ensure the requirements are met. Although offerors are encouraged to propose alternative standards, they must be subject to DoD’s review and approval. DoD standards ensure that essential mission requirements are met. It is the offeror’s responsibility to demonstrate that its proposed alternative standards meet the essential DoD mission requirements.

6. Revise DFARS Clause 252.211–7005

Comment: One respondent recommended revising DFARS clause 252.211–7005, Substitutions for Military or Federal Specifications and Standards, to meet the intent of the requirements in section 875.

Response: The rule revises the prescription to require the use of the provision at FAR 52.211–7 when Government-unique specifications and standards are included in DoD solicitations; use of this provision was previously optional. This approach meets the intent of section 875 requirements.

7. Revise DFARS 211.201

Comment: One respondent recommended revising DFARS 211.201 to add the new requirements established in section 875, which require military specifications to be used in acquisitions only to define an exact design solution when there is no acceptable commercial or non-Government standard, or when the use of a commercial or non-Government standard is not cost effective.

Response: DoD has determined it is unnecessary to revise DFARS 211.201, since the rule removes the prohibition at DFARS 211.107(b). This rule requires DoD to use FAR provision 52.211–7 to permit offerors to propose commercial or non-Government standards and industry-wide practices.

C. Other Changes

A reference to section 875(c) of the NDAA for FY 2017 is added at 211.107(b) and a minor editorial change is made to DFARS 211.201 to revise the name of the database from “DLA ASSIST database” to “ASSIST database”.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and Contracts for Commercial Items, Including Commercially Available Off-the-Shelf Items

The purpose of this rule is to implement section 875(c) of the NDAA for FY 2017, which requires DoD to revise the DFARS to encourage offerors to propose commercial or non-Government standards and industry-wide practices that meet the intent of military or Government-unique specifications and standards. The rule does not add any new provisions or clauses; however, to comply with section 875(c), the rule requires DoD contracting officers to use the provision at FAR 52.211–7 in DoD solicitations that include military or Government-unique specifications and standards.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

In accordance with 41 U.S.C. 1905, the Principal Director, DPC, has determined that it would not be in the best interest of the Federal Government to exempt acquisitions not greater than the SAT from the requirements of section 875(c) of the NDAA for FY 2017. This rule prescribes the use of the provision at FAR 52.211–7 in DoD solicitations that include military or Government-unique specifications and standards, which include those for acquisitions valued at or below the SAT. It is possible that contracts valued at or below this threshold (currently \$250,000), could contain military or Government-unique specifications or standards; therefore, it is necessary and appropriate to include this provision in such contracts in order to give potential offerors an opportunity to propose alternatives to such specifications and standards. Providing such opportunities to offerors may increase competition

and ultimately drive down costs associated with compliance with military or Government-unique specifications and standards.

B. Applicability to Contracts and Subcontracts for the Procurement of Commercial Items, Including Commercially Available Off-the-Shelf Items

10 U.S.C. 2375 governs the applicability of Defense-unique statutes to contracts and subcontracts for procurement of commercial items, including commercially available off-the-shelf (COTS) items. It is intended to limit the applicability of these laws to such contracts or subcontracts. 10 U.S.C. 2375(b)(2) provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it is not in the best interest of the Department of Defense to exempt contracts for the procurement of commercial items, then the provision of law will apply to contracts for the procurement of commercial items. 10 U.S.C. 2375(c)(2) and (d)(2) make similar provisions for subcontracts under contracts for the procurement of commercial items, and for the procurement of commercially available off-the-shelf (COTS) items.

Determinations in accordance with 10 U.S.C. 2375 have not been made. This rule does not prescribe the provision at FAR 52.211–7 for use in solicitations issued using FAR part 12 procedures for the acquisition of commercial items, including COTS, since such contracts should not include military or Government-unique specifications or standards.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Orders 13771

This final rule is an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule implements section 875(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). The objective of this rule is to require the use of FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations that include military or Government-unique specifications and standards. This will encourage and permit offerors to propose alternatives to Government-unique standards by using an existing FAR provision. The legal basis for this rule is section 875(c) of the NDAA for FY 2017.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

Based on Federal Procurement Data System data for Product Service Code 5342 (hardware, weapon systems), this rule could potentially apply to approximately 710 unique entities, of which 565 are small businesses. This is based on the number of DoD contract awards in FY 2017. However, of that total, and given the DoD policy of discouraging the use of military specifications and standards in solicitations, this rule would likely impact no more than 40 offerors or potential contractors (the approximate number of DoD contractors involved in major weapons systems). Accordingly, DoD estimates that this rule will have limited impact. Given the fact that some small number of DoD solicitations may include a military or Government-unique specification or standard generally limited to those involving a major weapons system, this rule provides a means for offerors to propose alternatives to a given solicitation.

This rule contains reporting and recordkeeping requirements for those entities that, in response to a DoD solicitation containing military or Government-unique standards, wish to propose voluntary consensus standards that meet the Government's requirements as alternatives to the Government-unique standards. The professional skill sets required are those of mid-level administrative personnel.

There are no known significant alternative approaches to the rule that would meet the requirements of the

statute. DoD considers the approach described in the rule to be the most practical and beneficial for both Government and industry.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. OMB has cleared this information collection requirement under OMB control number 9000–0153, titled, OMB Circular A–119; FAR Sections Affected: 52.211–7 and 53.105.

List of Subjects in 48 CFR Part 211

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 211 is amended as follows:

PART 211—DESCRIBING AGENCY NEEDS

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

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 211.107 to read as follows:

211.107 Solicitation provision.

(b) To comply with section 875(c) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328), use the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations that include military or Government-unique specifications and standards.

■ 3. Revise section 211.201 to read as follows:

211.201 Identification and availability of specifications.

Follow the procedures at PGI 211.201 for obtaining specifications, standards, and data item descriptions from the ASSIST database, including DoD adoption notices on voluntary consensus standards.

[FR Doc. 2019–02524 Filed 2–14–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 239, and 252

[Docket DARS–2019–0002]

RIN 0750–AK26

Defense Federal Acquisition Regulation Supplement: Extension of Supply Chain Risk Management Authority (DFARS Case 2018–D072)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 881 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 881 codifies the authority for information relating to supply chain risk at 10 U.S.C. 2339a and repeals the sunset date at sections 806(g) of the NDAA for FY 2011 (Pub. L. 111–383), as modified by section 806(a) of the NDAA for FY 2013 (Pub. L. 112–239), making the authority permanent.

DoD published a final rule (DFARS Case 2012–D050) in the **Federal Register** at 80 FR 67243 on October 30, 2015, to implement section 806 of the NDAA for FY 2011, as amended by section 806 of the NDAA for FY 2013 (Pub. L. 112–239). The objective of the rule was to minimize the potential risk for supplies and services purchased by DoD to maliciously degrade the integrity and operation of sensitive information technology systems. The rule implemented the use of supply chain risk as an evaluation factor in information technology procurements for services or supplies as a covered system, as a part of a covered system, or in support of a covered system. DFARS provision 252.239–7017, Notice of Supply Chain Risk, and DFARS clause 252.239–7018, Supply Chain Risk, were added to inform contractors of the requirement to mitigate supply chain risk in the provision of supplies and

services to the Government and other statutory authorities afforded to the Government under section 806.

Section 881 of the NDAA for FY 2019 codified this authority at 10 U.S.C. 2339a and removed the September 30, 2018, sunset date. This final rule removes the sunset date at DFARS 239.7300(b) and changes numerous statutory citations from section 806 of Public Law 111–383 to 10 U.S.C. 2339a. This rule makes no change to the authority for information relating to supply chain risk currently implemented in the DFARS, other than removing the sunset date, updating the statutory citations, and the following minor editorial changes:

- Corrects the reference to 44 U.S.C. 3552(b) in the definition of “covered system.”
- Replaces the description of a national security system with the defined term “covered system” in the definition of “supply chain risk.”
- Changes “Under Secretary of Defense for Acquisition, Technology, and Logistics” to “Under Secretary of Defense for Acquisition and Sustainment.”

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled “Publication of Proposed Regulations.” Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule merely removes the sunset date of the existing regulation, making it permanent, and replaces the obsolete statutory citations with the new 10 U.S.C. 2339a reference.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes the sunset date from DFARS 239.7300(b) and updates the statutory citations to 10 U.S.C. 2339a, wherever necessary. The rule continues to prescribe the associated clauses to contracts at or

below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not a significant under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 215, 239, and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense
Acquisition Regulations System.

Therefore, 48 CFR 212, 215, 239, and 252 are amended as follows:

- 1. The authority citation for parts 212, 215, 239, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

- 2. Amend section 212.301, in paragraphs 212.301(f)(xv)(C) and (D), by removing “section 806 of Public Law 111–383” and adding “10 U.S.C. 2339a” in its place in both places.

PART 215—CONTRACTING BY NEGOTIATION

215.503 [Amended]

- 3. Amend section 215.503 by removing “section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the National Defense Authorization Act for Fiscal Year 2013” and adding “10 U.S.C. 2339a” in its place.

215.506 [Amended]

- 4. Amend 215.506, in paragraph (e) by removing “section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the National Defense Authorization Act for Fiscal Year 2013” and adding “10 U.S.C. 2339a” in its place.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

- 5. Revise section 239.7300 to read as follows:

239.7300 Scope of subpart.

This subpart implements 10 U.S.C. 2339a and elements of DoD Instruction 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/520044p.pdf?ver=2018-11-08-075800-903>.

239.7301 [Amended]

- 6. Amend section 239.7301 by—
 - a. In the definition of “Covered item of supply” removing “(see section 806(e)(6) of Pub. L. 111–383)” and adding “(see 10 U.S.C. 2339a)” in its place;
 - b. In the introductory text of the definition of “Covered system” removing “44 U.S.C. 3542(b)(see section 806(e)(5) of Pub. L. 111–383)” and adding “44 U.S.C. 3552(b) (see 10 U.S.C. 2339a)” in its place; and
 - c. In the definition of “Supply chain risk” removing “national security system (as that term is defined at 44 U.S.C. 3542(b))” and “such system” and adding “covered system” and “such system (see 10 U.S.C. 2339a)” in its place, respectively.

239.7302 [Amended]

■ 7. Amend section 239.7302, introductory text, by removing “national security systems, as that term is defined at 44 U.S.C. 3542(b),” and adding “covered systems (see 10 U.S.C. 2339a)” in its place.

239.7303 [Amended]

■ 8. Amend section 239.7303 by—

- a. In paragraph (b)(1), removing “Acquisition, Technology, and Logistics” and adding “Acquisition and Sustainment” in its place; and
- b. In paragraph (b)(2), removing “senior” and adding “service” in its place.

239.7304 [Amended]

■ 9. Amend section 239.7304, in paragraphs (a), (b) introductory text, and (c)(2)(ii) by removing “Acquisition, Technology, and Logistics” and adding “Acquisition and Sustainment” in their place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.239–7017 [Amended]

■ 10. Amend section 252.239–7017 by—

- a. In the clause heading, removing the date “(NOV 2013)” and adding “(FEB 2019)” in its place;
- b. In paragraph (a), removing “national security system (as that term is defined at 44 U.S.C. 3542(b))” and “such system” and adding “covered system” and “such system (see 10 U.S.C. 2339a)” in its place, respectively;
- c. In paragraph (b) removing “section 806 of Public Law 383” and adding “10 U.S.C. 2339a” in its place; and
- d. In paragraph (c) removing “section 806 of Public Law 383” and adding “10 U.S.C. 2339a” in its place.

252.239–7018 [Amended]

■ 11. Amend section 252.239–7018 by—

- a. In the clause heading, removing the date “(OCT 2015)” and adding “(FEB 2019)” in its place;
- b. In paragraph (a), in the definition of “Supply chain risk” removing “national security system (as that term is defined at 44 U.S.C. 3542(b))” and “such system” and adding “covered system” and “such system (see 10 U.S.C. 2339a)” in its place, respectively; and
- c. In paragraphs (c) and (d), removing “section 806 of Public Law 111–383” and adding “10 U.S.C. 2339a” in its place in both places.

[FR Doc. 2019–02529 Filed 2–14–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 247, and 252

[Docket DARS–2018–0040]

RIN 0750–AJ94

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause “Transportation of Supplies by Sea” (DFARS Case 2018–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause, in order to streamline the instructions to contractors subject to both of these clauses.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 42846 on August 24, 2018, to modify DFARS clause 252.247–7023, Transportation of Supplies by Sea, to include the instructions currently specified in DFARS clause 252.247–7024, Notification of Supplies by Sea, and then remove DFARS clause 252.247–7024 from the DFARS. No public comments were received in response to the proposed rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This rule does not create any new provisions or clauses or impose any new requirements. The rule merely consolidates existing instructions regarding notifications of transportation of supplies by sea into a single DFARS clause, 252.247–7023, which will continue to apply to contracts for commercial and commercially available Off-the-shelf items, as well as contracts at or below the simplified acquisition threshold.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending DFARS clause 252.247–7023, Transportation of Supplies by Sea, to include the instructions currently specified in DFARS clause 252.247–7024, Notification of Supplies by Sea, and then removing DFARS clause 252.247–7024 from the DFARS. The objective of this rule is to streamline the instructions to contractors pertaining to the transportation of supplies by sea. The combination of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force.

No public comments were received in response to the initial regulatory flexibility analysis.

Based on fiscal year 2016 data from the Federal Procurement Data System, the Government issued approximately 83,000 contract actions that included DFARS clause 252.247–7023. Of the 83,000 contract actions, approximately 39,000 awards were made to 15,000 unique small businesses entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known significant alternative approaches to the rule that would meet the proposed objectives.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0245, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 212, 247, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 247, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. Amend section 212.301 by:

- a. Removing paragraph (f)(xix)(D);
- b. Redesignating paragraphs (f)(xix)(E) through (H) as paragraphs (f)(xix)(D) through (G), respectively;
- c. In the newly redesignated paragraph (f)(xix)(D), removing “247.574(d)” and adding “247.574(c)” in its place;
- d. In the newly redesignated paragraph (f)(xix)(E), removing “247.574(e)” and adding “247.574(d)” in its place;
- e. In the newly redesignated paragraph (f)(xix)(F), removing “247.574(f)” and adding “247.574(e)” in its place; and
- f. In the newly redesignated paragraph (f)(xix)(G), removing “U.S.” and adding “U.S.” in its place.

PART 247—TRANSPORTATION

247.574 [Amended]

■ 3. Amend section 247.574 by:

- a. Removing paragraph (c); and
- b. Redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.247–7023 by:

- a. In the clause heading, removing the date “(APR 2014)” and adding “(FEB 2019)” in its place;

- b. Redesignating paragraph (h) as paragraph (i);
 - c. Adding a new paragraph (h); and
 - d. In the newly redesignated paragraphs (i)(1) and (2), removing “paragraph (h)” and adding “paragraph (i)” in both places;
 - e. In Alternate I:
 - i. In the clause heading, removing the date of “(APR 2014)” and adding “(FEB 2019)” in its place;
 - ii. Redesignating paragraph (h) as paragraph (i);
 - iii. In the newly redesignated paragraphs (i)(1) and (2), removing “paragraph (h)” and adding “paragraph (i)” in both places; and
 - iv. Adding a new paragraph (h).
 - f. In Alternate II—
 - i. In the clause heading, removing the date of “(APR 2014)” and adding “(FEB 2019)” in its place;
 - ii. Redesignating paragraph (h) as paragraph (i);
 - iii. In the newly redesignated paragraphs (i)(1) and (2), removing “paragraph (h)” and adding “paragraph (i)” in both places; and
 - iv. Adding a new paragraph (h).
- The additions read as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of this clause.

* * * * *

Alternate I. * * *

* * * * *

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of this clause.

* * * * *

Alternate II. * * *

* * * * *

(h) If the Contractor has indicated by the response to the solicitation

provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies, but the contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall notify the Contracting Officer of that fact.

* * * * *

252.247–7024 [Removed and Reserved]

■ 4. Remove and reserve section 252.247–7024.

252.247–7025 [Amended]

■ 5. Amend section 252.247–7025, in the introductory text, by removing “247.574(d)” and adding “247.574(c)” in its place.

252.247–7026 [Amended]

■ 6. Amend section 252.247–7026, in the introductory text, by removing “247.574(e)” and adding “247.574(d)” in its place.

252.247–7027 [Amended]

■ 7. Amend section 252.247–7027, in the introductory text, by removing “247.574(f)” and adding “247.574(e)” in its place.

[FR Doc. 2019–02528 Filed 2–14–19; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 236

[Docket DARS–2018–0039]

RIN 0750–AJ75

Defense Federal Acquisition Regulation Supplement: Exemption From Design-Build Selection Procedures (DFARS Case 2018–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that provides an exemption from design-build selection procedures for contracts that exceed \$4 million.

DATES: Effective February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 42850 on August 24, 2018, to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 823 modifies 10 U.S.C. 2305a to provide an exemption from the phase two design-build maximum number of offerors that may be selected to submit competitive proposals for contracts exceeding \$4 million. The exemption provides that if the contract value exceeds \$4 million and the solicitation is issued pursuant to an indefinite-delivery indefinite-quantity (IDIQ) contract for design-build construction, the maximum number of offerors to be selected may exceed five.

In addition, for other than IDIQ contracts, the rule provides authority to exceed the five offeror maximum when the contracting officer's decision is approved by the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, when the solicitation is for a contract that exceeds \$4 million. When a solicitation is for a contract that does not exceed \$4 million, the rule provides that the number of offerors is at the contracting officer's discretion.

Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments received and any changes made to the rule are provided as follows:

A. Summary of Significant Changes

There were no changes from the proposed rule made in the final rule as a result of the comments received. The comments did not recommend changes to the proposed rule; rather, the respondents expressed concerns over the underlying intent of the statute.

B. Analysis of Public Comments

1. Administrative and Cost Burden

Comment: Several respondents stated that the statutory requirement will create a significant administrative and cost burden on the Government and/or industry. One respondent suggested that the exemption will require DoD officials to review an unnecessarily high number of full proposals undermining the purpose of both IDIQ contracts and design-build.

Response: The rule does not require contracting officers to consider more than five offerors; instead, the rule

provides contracting officers the option to allow for more than five offerors to submit competitive proposals in solicitations for contracts for design-build construction that exceed \$4 million.

2. Impact on Competition

Comment: Several respondents stated that the statutory requirement will drive away highly qualified design-build firms and/or possibly favor lower qualified firms. One respondent stated that increasing the number of offerors will reduce participation from highly qualified firms who incur much of the cost in these competitions. The same respondent noted that increasing the number of offerors may favor lower qualified offerors based on artificially low bids.

Response: DoD does not agree that the statutory requirement, and the resulting implementing rule, will drive away highly qualified design-build firms and/or possibly favor lower qualified firms. The competitive selection criteria will not change based on this rule. Conversely, the rule could be viewed as providing expanded opportunity for qualified firms to compete.

3. Learning Curve

Comment: One respondent stated that the statutory requirement will create a learning curve for new firms, which will result in longer project times.

Response: DoD does not agree that expanding the competitive pool will necessarily result in longer project times. While a learning curve might be expected for any new firm or new requirement, this does not drive the decision of whether or not to restrict competition.

4. Industry Best Practices/Innovation

Comment: Two respondents stated that the statutory requirement moves away from industry best practices. One respondent stated that the statutory requirement diminishes the opportunities for innovation that design-build offers.

Response: While the rule may be viewed by the respondents as moving away from industry best practices, this rule is necessary to meet the requirements of the statute. Opening up the competitive pool may result in opportunities for increased innovation.

5. Accountability

Comment: One respondent stated that the statutory requirement will create a larger competitive pool which will diminish accountability.

Response: Opening up the competitive pool should not have any effect upon or diminish accountability.

C. Other Changes

One minor editorial change is made to the rule numbering to correctly designate the added DFARS rule text as "236.303-1(a)(4)" in lieu of "236.303-1(4)".

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, which modifies 10 U.S.C. 2305a(d) regarding the maximum number of offerors that may be selected to submit competitive proposals under solicitations for two-phase design-build. Specifically, the selection procedures are modified by providing an exemption from the maximum number of five offerors when the contract value in a solicitation exceeds \$4 million and the solicitation is issued pursuant to an indefinite-delivery indefinite-quantity (IDIQ) contract for design-build construction. The rule provides the

authority to exceed the five offeror maximum when the contracting officer's decision is approved by the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, when the solicitation is for a contract that exceeds \$4 million. The rule also provides that the number of offerors is at the contracting officer's discretion when the solicitation is for a contract that does not exceed \$4 million.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Based on FY 2017 data from the Federal Procurement Data System, DoD issued approximately 499 new awards for construction exceeding \$4 million to 396 unique businesses, to include IDIQ contracts, purchase orders, and orders under basic ordering agreements. Of the 499 new awards for construction, approximately 305 awards (approximately 61 percent) were made to 252 unique small entities (approximately 64 percent). This estimate is based on the assumption that contracts for design-build are coded as "construction" in FPDS, in which case a smaller number of small entities are actually impacted by the opportunity to exceed to the five offeror maximum for contracts valued in excess of \$4 million. For contracts valued at or below \$4 million, the FAR already provides an opportunity for contracting officers to determine that a greater number of offerors is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. No significant impact is expected to result from authorizing contracting officers to exceed the maximum number at their own discretion.

This final rule does not include any new reporting or recordkeeping requirements for small entities.

There are no known significant alternative approaches to the final rule that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 236

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 236 is amended as follows:

PART 236—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add subpart 236.3, consisting of 236.303–1, to read as follows:

SUBPART 236.3—TWO-PHASE DESIGN–BUILD SELECTION PROCEDURES

236.303–1 Phase One.

(a)(4) In lieu of the limitations on the maximum number of offerors that may be selected to submit phase-two proposals at FAR 36.303–1(a)(4), for DoD—

(i) If the contract value exceeds \$4 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals shall not exceed five, unless—

(A) The solicitation is issued for an indefinite-delivery indefinite-quantity contract for design-build construction; or

(B) The head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's decision with respect to an individual solicitation, that a maximum number greater than five is in the best interest of the Government and is consistent with the purposes and objectives of the two-phase selection procedures. The decision shall be documented in the contract file (10 U.S.C 2305a(d)).

(ii) If the contract value is at or below \$4 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals is at the discretion of the contracting officer.

[FR Doc. 2019–02526 Filed 2–14–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180702599–9068–02]

RIN 0648–BI03

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 6; Revised 2018–2019 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements measures submitted by the New England Fishery Management Council in Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan and revises the 2018–2019 skate fishery specifications. This action is necessary to allow the skate wing total allowable landings to be achieved while minimizing the need to restrict fishing operations through incidental possession limits. This action intends to extend the directed fishing time for both the skate wing and bait fisheries.

DATES: Effective on February 15, 2019.

ADDRESSES: The New England Fishery Management Council (Council) prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 6 that describes the action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a Regulatory Impact Review, and economic analysis. Copies of the Framework 6 EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council's Northeast Skate Complex Fishery Management Plan (FMP) manages a complex of seven skate species (barndoor, clearnose, little,

rosette, smooth, thorny, and winter skate) off the New England and mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: One for food (the wing fishery) and one for lobster and crab bait (the bait fishery).

The fishing year for skates is from May 1 to April 30. The directed wing fishery is managed using possession limits in two separate seasons. The bait fishery has possession limits in three separate seasons (Table 1). When catch

approaches the seasonal total allowable landings (TAL), a lower, more restrictive incidental possession and landing limit is implemented to slow harvest and help ensure that seasonal quotas are not exceeded.

TABLE 1—POSSESSION LIMITS PER TRIP FOR FISHING YEARS 2018–2019

Skate possession limits *		Trip limits			
		Skate wings	Whole skates	Barndoor ** skate wings	Whole barndoor ** skates
Northeast (NE) Multispecies, Scallop, or Monkfish Day-At-Sea (DAS).	Season 1 (May 1–August 31)	2,600 lb, 1,179 kg	5,902 lb, 2,677 kg	650 lb, 295 kg	1,476 lb, 670 kg.
	Season 2 (September 1–April 30).	4,100 lb, 1,860 kg	9,307 lb, 4,222 kg	1,025 lb, 465 kg	2,327 lb, 1,056 kg.
NE Multispecies B DAS	May 1–April 30	220 lb, 100 kg	500 lb, 227 kg	0	0.
Non-DAS	May 1–April 30	500 lb, 227 kg	1,135 lb, 515 kg	0	0.
Whole skate with bait Letter of Authorization.	May 1–October 31	0	25,000 lb, 11,340 kg	0	0.
	November 1–April 30	0	12,000 lb, 5,443 kg	0	0.

* Possession limits may be modified in-season in order to prevent catch from exceeding quotas.

** Barndoor skate trip limits are within the overall skate possession limit for each trip, not in addition to it.

In recent years, a combination of lower overall catch limits and strong fishery participation has caused the incidental limits in both the wing and bait fisheries to be put into effect with several months remaining in the fishing year. To address this issue for the bait fishery, the Council developed and NMFS implemented Framework 4 in March 2018 to better control the catch of skate bait throughout the fishing year (83 FR 6133; February 13, 2018). Similarly, the Council developed Framework 6 to adjust measures to extend the directed skate wing fishing year and reduce negative impacts when skate wing incidental limits are triggered. The Council took final action on Framework 6 at its June 2018 meeting. On November 27, 2018, we proposed management modifications to implement Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan and revise the 2018–2019 specifications (83 FR 60818).

Final Measures

This action adjusts the management uncertainty buffer between the annual catch limit (ACL) and annual catch target (ACT) in the skate FMP. The current uncertainty buffer between the ACL and ACT is 25 percent (i.e., ACT = 75 percent of ACL). This action reduces this buffer to 10 percent, resulting in an increase in the TALs for both the wing and bait fisheries. Council analysis indicates that this revised buffer will likely delay the need to

implement the restrictive incidental limit of 500 lb (227 kg) in the wing fishery until later this spring. For the bait fishery, this buffer reduction is expected to delay enacting the incidental limits until around March. The analyses within Framework 6 indicate that the level of management uncertainty within the skate fishery has likely reduced since the implementation of the ACL operational framework in 2010. For example, management controls put in place have been effective at constraining catch; species identification and catch accounting has improved; ACLs have not been exceeded, and only minor overages of fishery TALs have occurred. This action also makes an administrative change to the accountability measures regulation to be consistent with the uncertainty buffer changes.

Revised 2018–2019 Specifications

The modification to the management uncertainty buffer results in adjustments to the 2018–2019 specifications implemented through Framework 5 (83 FR 48985; September 28, 2018). As a result, this action implements the following revised 2018–2019 specifications (Table 2):

1. The acceptable biological catch (ABC) and ACL remains at 31,327 mt.
2. An ACT of 28,194 mt (90 percent of the ACL).
3. A TAL of the 15,788 mt for the entire skate fishery.

4. A TAL of 10,499 mt for the wing fishery that is divided in two seasons according to the current regulations at 50 CFR 648.322. In season 1 (May 1–August 31) the TAL will be 5,984 mt (57 percent), and the remainder of the TAL allocated to Season 2 (September 1–April 30). As the 2018 fishing year started on May 1, the wing TALs will be retroactively increased. The regulations for the skate fishery allow for unused wing TAL from Season 1 to be rolled-over to Season 2. NMFS estimates that 4,490 mt of wings were landed in Season 1, and therefore 1,494 mt can be rolled over to Season 2 in 2018. Given this, the Season 2 wing TAL in 2018 will be approximately 6,009 mt.

5. A TAL of 5,289 mt for the bait fishery that is divided into three seasons according to the current regulations at § 648.322. In Season 1 (May 1–July 31) the TAL is 1,629 mt (30.8 percent); in Season 2 (August 1–October 31) the TAL is 1,962 mt (37.1 percent), and the remainder (1,698 mt) is allocated to Season 3 (November 1–April 30). As the 2018 fishing year started on May 1, the bait TALs will be retroactively increased. The regulations for the skate fishery allow for the unused bait TAL from Seasons 1 and 2 to be rolled-over to Season 3. Therefore, NMFS will adjust the 2018 Season 3 bait TAL accordingly. The 2018 Season 3 bait TAL will increase by 1,062 mt, resulting in a final season 3 TAL of 2,760 mt.

TABLE 2—COMPARISON OF THE FRAMEWORK 5 2018–2019 SPECIFICATIONS TO THE REVISED FRAMEWORK 6 2018–2019 VALUES
[mt]

	Previous	Revised
ABC = ACL	31,327	31,327
ACT	23,495	28,194
Wing Fishery TAL	8,749	10,499
Bait Fishery TAL	4,408	5,289

The Council reviewed the Framework 6 regulations and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management Act.

Comments and Responses

We received nine public comments on the proposed rule, which we have merged into three comments below.

Comment 1: The Sustainable Fisheries Association (SFA), the Atlantic Offshore Lobstermen’s Association, and one member of the public offered support for this action. The SFA also requested that this final rule be implemented as soon as possible to avoid an unnecessary closure of the directed wing fishery based on the TALs implemented through Framework 5.

Response: NMFS agrees and is implementing this rule as soon as possible.

Comment 2: Four individuals and Shark Advocates International were not supportive of the reduction in the uncertainty buffer due to concerns over declining skate populations and inadequate fisheries data.

Response: Based on the most recent assessment information, NMFS disagrees that the skate species are depleted. With the exception of thorny skate, the seven other skate species that make up the skate complex are not overfished or experiencing overfishing. Thorny skates are overfished, but overfishing is not occurring and retention and landing of thorny skates is prohibited. This action is based on the best available information and takes into account the status of these stocks when determining appropriate management buffers and specifications. The Council’s analysis for Framework 6 indicated that several sources of management uncertainty outlined in the 2010 action that established the 75-percent buffer have been improved such that revising the buffer is appropriate. The Council may adjust the management uncertainty buffer in a future action if it is determined that the buffer should be increased to respond to changes in available data or skate stock status.

Comment 3: We received one additional letter from the New London Seafood Distributors that made no comment on the proposed measures, but requested that additional measures be considered. Specifically, the organization is interested in adjusting seasonal possession limits and allowing for a higher proportion of the TAL in Season 3.

Response: These suggestions are outside the scope of this action but the Council may consider this information in a future action. New specifications for fishing years 2020–2022 are expected to be developed by the Council in 2019.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 6 is necessary for the conservation and management of the northeast skate complex and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds that because this rule relieves restrictions (*i.e.*, increases the total allowable landings available to the wing and bait fisheries to allow the fisheries to continue uninterrupted), it is excepted from the 30-day delay in effectiveness under 5 U.S.C. 533(d)(1). During the partial government shutdown that began on December 21, 2018, the wing fishery reached 91 percent of its current 2018 TAL, which is above the 85-percent threshold for implementing the incidental possession limit that would essentially close the directed wing fishery by reducing the possession limit to 500 lb (227 kg). Because this action will increase the 2018–2019 TAL by 20 percent, the possession limit threshold would be extended to later in the fishing year. If the 30-day delay of effectiveness is not waived, unnecessarily restrictive incidental limits will need to be implemented and be in effect longer, putting some vessels at a disadvantage.

This would be contrary to the public interest because it would undermine the intent of this rule to extend the directed fishing time for both the skate wing and bait fisheries. As a result, NMFS is waiving the requirement.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 11, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.320, paragraph (a)(4) is revised to read as follows:

§ 648.320 Skate FMP review and monitoring.

(a) * * *

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the

Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 90 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

* * * * *

■ 3. In § 648.323, revise the heading for paragraph (b) and paragraph (b)(1) to read as follows:

§ 648.323 Accountability measures.

* * * * *

(b) *ACL overages.* (1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT shall be increased by 1 percent for each 1-

percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

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[FR Doc. 2019–02382 Filed 2–14–19; 8:45 am]

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Proposed Rules

Federal Register

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Friday, February 15, 2019

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 205

[Document Number AMS–NOP–18–0051; NOP–18–02]

RIN 0581 AD80

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances for April 2018 NOSB Recommendations (Crops and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture’s (USDA’s) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule proposes to add elemental sulfur for use as a molluscicide in organic crop production, add polyoxin D zinc salt to control fungal diseases in organic crop production, and reclassify magnesium chloride from an allowed synthetic to an allowed nonsynthetic ingredient in organic handling.

DATES: Comments must be received by April 16, 2019.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Valerie Frances, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252.

Instructions: All submissions received must include the docket number AMS–NOP–18–0051; NOP–18–02, and/or Regulatory Information Number (RIN) 0581–XXXX for this rulemaking. When submitting a comment, clearly indicate the proposed rule topic and section number to which the comment refers. In addition, comments should clearly indicate whether or not the commenter supports the action being proposed and also clearly indicate the reason(s) for the position. Comments can also include information on alternative management practices, where applicable, that support alternatives to the proposed amendments. Comments should also offer any recommended language change(s) that would be appropriate to the position. Please include relevant information and data to support the position such as scientific, environmental, manufacturing, industry, or impact information, or similar sources. Only relevant material supporting the position should be submitted. All comments received will be posted without change to <http://www.regulations.gov>.

Document: To access the document and read background documents, or comments received, go to <http://www.regulations.gov>. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2642—South Building, 1400 Independence Ave. SW, Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this

proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling.

The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501–6522) (OFPA), and § 205.105 of the USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations developed by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA’s Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This proposed rule would amend the National List to implement three NOSB recommendations. These recommendations were submitted to the Secretary on April 27, 2018. Table 1 summarizes the proposed changes to the National List based on these NOSB recommendations.

TABLE 1—PROPOSED AMENDMENTS TO THE NATIONAL LIST

Substance	National List section	Proposed rule action
Elemental Sulfur	§ 205.601(h)	Add to National List.
Polyoxin D Zinc Salt	§ 205.601(i)	Add to National List.
Magnesium Chloride (MgCl)	§ 205.605(b) to § 205.605(a)	Reclassify listing and move within National List.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

§ 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would add two substances to § 205.601, synthetic substances allowed for use in organic crop production.

Elemental Sulfur

The proposed rule would amend the National List to add elemental sulfur to § 205.601(h) for use as a molluscicide bait to control slugs and snails. Table 2 illustrates the proposed rule action.

TABLE 2—PROPOSED RULE ACTION FOR ELEMENTAL SULFUR

Current rule ... Proposed rule action.	N/A. Add elemental sulfur to § 205.601(h) as slug or snail bait.
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On May 25, 2017, AMS received a petition ¹ to add elemental sulfur to the National List in § 205.601(h) for use as a slug or snail bait. Currently, the USDA organic regulations allow elemental sulfur for use in organic crop production as an insecticide (including mite control) in § 205.601(e); as a plant disease control in § 205.601(i); and as a plant or soil amendment in § 205.601(j).

At its April 2018 public meeting, the NOSB considered the petition to add elemental sulfur to the National List for use in organic crop production as a molluscicide. Increased adoption of low tillage and no tillage agricultural practices can increase the abundance of snails and slugs, which can reduce crop yields. The availability of a molluscicide as a new tool will help prevent crop losses. In its review, the NOSB considered a March 2017 technical report on elemental sulfur ² that described its manufacture, industry uses, regulation, and chemical properties. Prior to and during this meeting, the NOSB received and considered public comment on the proposal.

In consideration of the petition, technical report, and public comments, the NOSB determined that the use of

elemental sulfur as a slug or snail bait for organic crop production satisfies OFPA evaluation criteria for National List substances and recommended adding elemental sulfur to § 205.601(h) as a slug or snail bait for organic crop production.³

AMS has reviewed and agrees that the NOSB has considered the petitions, technical report, and public comments sufficiently, and that elemental sulfur used as a slug or snail bait satisfies the OFPA criteria for National List substances. AMS proposes to address this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the National List by adding elemental sulfur to § 205.601(h) as a slug or snail bait. This would permit the use of elemental sulfur-based bait, providing an additional tool to organic producers to control slugs and snails when other required preventive measures have failed to provide sufficient control (§ 205.206(e)).

Polyoxin D Zinc Salt

The proposed rule would amend the National List to add polyoxin D zinc salt to control fungal diseases at § 205.601(i). Table 3 illustrates the proposed rule change.

TABLE 3—PROPOSED RULE ACTION FOR POLYOXIN D ZINC SALT

Current rule ... Proposed rule action.	N/A. Add polyoxin D zinc salt to § 205.601(i) as plant disease control.
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Two petitions to add polyoxin D zinc salt for use in organic crop production were submitted to the National Organic Program: One in March 2012 and the other in May 2016. Both petitions and an addendum in February 2018 proposed to amend 7 CFR 205.601 to add polyoxin D zinc salt as a synthetic substance allowed for use in organic crop production.⁴

In consideration of the information in the March 2012 petition, the September 2012 technical report, and public comments, the NOSB determined that the use of polyoxin D zinc salt to control fungal diseases in organic crop production did not satisfy the OFPA

evaluation criteria for National List substances and did not recommend the addition of polyoxin D zinc salt to the National List in 2013.⁵

However, in May 2016, a new petition brought forward new data which indicated that polyoxin D zinc salt was not harmful to beneficial soil organisms and insects. This was supported by a limited scope technical report in December 2017. The petitioner also provided an analysis of grower need for this material. On February 2, 2018, the petitioner provided an addendum that more precisely specified that the requested amendment is for 7 CFR 205.601(i).

According to the 2012 and 2017 technical reports ⁶ and the March 2012 and May 2016 petitions, polyoxin D zinc salt is a synthetic biofungicide. The National List provides several materials that organic producers may use to control fungal diseases. However, the NOSB determined that polyoxin D zinc salt is more efficacious than other allowed materials against a broader range of fungal diseases, such as cottonball disease on cranberries; black rot, downy mildew, powdery mildew and bunch rot on grapes; mummyberry on blueberries; phomopsis leaf spot on strawberries; downy mildew on basil; and other fungal diseases on fruits.

In consideration of the March 2012 and May 2016 petitions, the February 2018 addendum, the 2012 and 2017 technical reports, and public comments, the NOSB determined that the use of polyoxin D zinc salt to control fungal diseases in organic crop production satisfies OFPA evaluation criteria for National List substances and recommended adding polyoxin D zinc salt to § 205.601(i) for plant disease control in organic crop production.⁷

AMS has reviewed and agrees that the NOSB has considered all of the petitions, technical reports, and public comments sufficiently, and that polyoxin D zinc salt satisfies the OFPA criteria for National List substances. AMS proposes to address this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the National List by

⁵ NOSB recommendation on the 2012 petition to add polyoxin D zinc salt to the National List: <https://www.ams.usda.gov/sites/default/files/media/Polyoxin%20D%20NOSB%20final%20recommendation.pdf>.

⁶ The technical report for polyoxin D zinc salt is available on the AMS website, organized in alphabetical order: <https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned>. Under "P."

⁷ NOSB Recommendations 2018 Spring Meeting: <https://www.ams.usda.gov/sites/default/files/media/CSPolyoxinDZincSaltRec.pdf>.

¹ Elemental sulfur petition: <https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned>. Under "S."

² The technical report for elemental sulfur is available on the AMS website, organized in alphabetical order: <https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned>. Under "S."

³ NOSB 2018 Spring meeting elemental sulfur recommendation: <https://www.ams.usda.gov/sites/default/files/media/CSSulfurMolluscicideRec.pdf>.

⁴ Polyoxin D zinc salt 2012 and 2016 petitions along with addendums found under "P": <https://www.ams.usda.gov/rules-regulations/organic/national-list/petitioned>. Details regarding the consideration of the 2012 petition can be found in the April 2013 NOSB Recommendation, available here: <https://www.ams.usda.gov/event/spring-nosb-meeting-2013-or>.

adding polyoxin D zinc salt to § 205.601(i) for plant disease control. This would permit the use of polyoxin D zinc salt in crop production to address fungal diseases when preventive measures have failed (§ 205.206(e)).

§ 205.605 *Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as “Organic” or “Made With Organic (Specified Ingredients or Food Group(s))”*

This proposed rule would reclassify one substance from an allowed synthetic ingredient in § 205.605(b), to an allowed nonsynthetic ingredient in § 205.605(a).

Magnesium Chloride

This proposed rule would reclassify magnesium chloride as a nonsynthetic substance that may be used in organic handling. It would also remove the annotation that magnesium chloride must be “derived from sea water.” Table 4 illustrates the proposed rule change.

TABLE 4—PROPOSED RULE ACTION FOR MAGNESIUM CHLORIDE

Current rule ...	§ 205.605(b) magnesium chloride—derived from sea water.
Proposed rule action.	Remove magnesium chloride from § 205.605(b) and insert magnesium chloride under § 205.605(a) without annotation.

Magnesium chloride derived from sea water is currently listed at § 205.605(b) as a nonagricultural (nonorganic) synthetic substance allowed as an ingredient in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).” The primary uses of magnesium chloride in organic food processing are as a firming agent in tofu processing and as a source of the essential mineral magnesium in organic infant formula. During the NOSB’s 2015 sunset review of magnesium chloride, the Board requested public comment on whether this material should be reclassified as nonsynthetic because it can be derived from sea water by brine drying with no ancillary substances. Public comments supported the reclassification of magnesium chloride as nonsynthetic and moving it from § 205.605(b) to § 205.605(a). To consider the reclassification of magnesium chloride on the National List, the NOSB requested a technical report on magnesium which was made available in November 2016.

Magnesium chloride is the simple salt of the halogen chlorine and the alkaline earth metal magnesium. The November 2016 technical report describes many different sources and processes to produce nonsynthetic forms of magnesium chloride which are widely commercially available.⁸ This substance is nonsynthetic when derived from natural sources and manufactured in a way that does not chemically change the substance (see § 205.2 definitions of *nonsynthetic (natural)* and *synthetic*). Public comments at the April 2018 NOSB meeting supported the reclassification of magnesium chloride as nonsynthetic and moving it from § 205.605(b) to § 205.605(a). No public comments were received indicating any concern with procuring nonsynthetic forms of magnesium chloride.⁹

In consideration of the new information provided in the November 2016 technical report and the public comments provided at both the 2015 and 2018 NOSB meetings, the NOSB unanimously recommended moving magnesium chloride to § 205.605(a) to more accurately reflect that nonsynthetic forms of this material are widely available. The NOSB also recommended that the annotation “derived from seawater” be removed when it is moved to § 205.605(a) because natural sources of magnesium chloride can be derived from terminal lake brines, subsurface brine deposits, and mined mineral deposits as well as seawater.¹⁰

Organic handlers who use magnesium chloride will need to ensure that the product complies with the nonsynthetic classification, the regulations and the listing at § 205.605(a) by obtaining details about the source of the magnesium chloride and its full manufacturing process. The NOP Program Handbook guidance documents NOP 5033, *Classification of Materials*, and NOP 5033–1, the *Decision Tree for the Classification of Materials as Synthetic or Nonsynthetic*,¹¹ can be used if additional clarification is needed. Synthetic forms of magnesium

chloride would be prohibited in organic handling.

AMS has reviewed and agrees that the NOSB has sufficiently considered the new information provided in the November 2016 technical report and the public comments provided at the 2015 and 2018 NOSB meetings in alignment with the OFPA criteria for National List substances and the NOP Program Handbook guidance documents NOP 5033 & NOP 5033–1.¹²

AMS proposes to address this NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend § 205.605(b) by removing magnesium chloride and inserting it in § 205.605(a) to more accurately reflect that this substance is available in nonsynthetic form. This proposed rule would also remove the annotation “derived from seaweed”.

III. Related Documents

On January 17, 2018, a Notice was published in the **Federal Register** (83 FR 2373) announcing the spring 2018 NOSB meeting. One purpose of the meeting was to deliberate on recommendations on current substances on the National List, and substances petitioned as amendments.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations sets forth the National List petition process. The current petition process (81 FR 12680, March 10, 2016) can be accessed through the NOP Program Handbook on the NOP website at <https://www.ams.usda.gov/rules-regulations/organic/handbook>.

A. Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from Executive Order 12866. Additionally, because this proposal does not meet the definition of a

⁸ The technical report for magnesium chloride is available on the AMS website, organized in alphabetical order under “M”: <https://www.ams.usda.gov/rules-regulations/organic/national-list/m>.

⁹ <https://www.ams.usda.gov/sites/default/files/media/TranscriptsSpring2018NOSBmeeting.pdf>.

¹⁰ NOSB Recommendations 2018 Spring Meeting: <https://www.ams.usda.gov/sites/default/files/media/HSMagnesiumChlorideReclassRec.pdf>.

¹¹ NOP 5033 *Classification of Materials* & NOP 5033–1 *Decision Tree for the Classification of Materials as Synthetic or Nonsynthetic*: https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.

¹² NOP 5033 *Classification of Materials* & NOP 5033–1 *Decision Tree for the Classification of Materials as Synthetic or Nonsynthetic* https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.

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).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS), to delineate which operations qualify as small businesses.¹³ The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than \$750,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, "All other professional, scientific and technical services." For this category, the small business threshold is average annual receipts of less than \$15 million.

AMS has considered the economic impact of this proposed rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the U.S. would be considered small entities. According to the 2016 Certified Organic NASS Survey, 13,954 certified organic farms in the U.S. reported sales of organic products and total farmgate sales in excess of \$7.5 billion.¹⁴ Based

on that data, organic sales average \$541,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the \$750,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 9,919 certified handlers in the U.S.¹⁵ The Organic Trade Association's 2017 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has approximately 80 accredited certifying agents, who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately \$4,200 in certification fees in order to exceed the SBA's small business threshold of \$15 million. The costs for certification generally range from \$500 to \$3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of additional and widely commercially available substances in organic crop or livestock production and organic handling. This action would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. AMS concludes that the economic impact of this addition, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain

requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this proposed rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

¹³ U.S. Small Business Administration regulations: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17#se13.1.121_1104.

¹⁴ U.S. Department of Agriculture, National Agricultural Statistics Service. September 2017.

Certified Organic Survey, 2016 Summary. http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-09-20-2017_correction.pdf.

¹⁵ Organic Integrity Database: <https://organic.ams.usda.gov/Integrity/>. Accessed on July 5, 2018.

D. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

F. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List and to reclassify one substance on the National List. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Archives and records, Crops, Imports, Labeling, National List, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Amend § 205.601 as follows:

- a. Revise paragraph (h) and add new paragraphs (h)(1) and (h)(2),
- b. Add new paragraph (i)(11).

The revision and additions to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(h) As slug or snail bait.

(1) Ferric phosphate (CAS # 10045–86–0).

(2) Elemental sulfur.

* * * * *

(i) * * *

(11) Polyoxin D zinc salt.

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■ 3. Amend § 205.605 as follows:

■ a. In paragraph (a), add in alphabetical order, an entry for “magnesium chloride.”

■ b. In paragraph (b), remove the entry for “magnesium chloride—derived from seawater.”

The addition to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

* * * * *

(a) * * *

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Magnesium chloride.

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Dated: February 12, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–02518 Filed 2–14–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 985**

[Doc. No. AMS–SC–18–0084; SC19–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2019–2020 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and producer allotments of Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2019–2020 marketing year. This proposed rule would also remove references to past volume regulation no longer in effect.

DATES: Comments must be received by March 18, 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>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: [http://](http://www.regulations.gov)

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 the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent, 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: Barry.Broadbent@usda.gov or 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.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend 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. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (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 spearmint oil producers 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 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Under the Order now in effect, salable quantities

and producer allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish quantities and percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil for the 2019–2020 marketing year, which begins on June 1, 2019.

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 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 not later than 20 days after the date of the entry of the ruling.

Pursuant to §§ 985.50, 985.51, and 985.52, the Order requires the Committee to meet each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. When such considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee recommends salable quantity limitations and producer allotments (allotments) to regulate the quantity of Far West spearmint oil available to the market.

According to § 985.12, “salable quantity” is the total quantity of each class of oil (Scotch or Native) that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The total industry allotment base is the aggregate of all allotment bases held individually by producers as prescribed under § 985.53(d)(1). The total allotment base is generally revised each year on June 1 due to producer base being lost because of the “bona fide effort” production provision of § 985.53(e).

Each producer's prorated share of the salable quantity of each class of oil, or their “annual allotment” as defined in § 985.13, is calculated by using an allotment percentage. The percentage is derived by dividing the salable quantity by the total industry allotment base for that same class of oil.

The Committee met on October 17, 2018, to consider its marketing policy

for the 2019–2020 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil would be necessary. With a 6–2 vote, the Committee recommended a salable quantity and allotment percentage for Scotch spearmint oil of 832,081 pounds and 38 percent. The two members voting in opposition to the recommendation favored volume regulation, but at an undesignated higher level than what was proposed. The Committee voted unanimously on its recommended salable quantity and allotment percentage for Native spearmint oil of 1,395,813 pounds and 56 percent. Salable quantities and allotment percentages have been placed into effect each season since the Order's inception in 1980.

Scotch Spearmint Oil

The Committee's recommended 2019–2020 marketing year salable quantity and allotment percentage for Scotch spearmint oil represent an increase from the previous year's levels. The proposed 2019–2020 marketing year salable quantity of 832,081 pounds is 71,421 pounds more than the 2018–2019 marketing year salable quantity of 760,660 pounds. The allotment percentage, recommended at 38 percent for the 2019–2020 marketing year, is an increase from the 35 percent in effect the previous year. The total estimated allotment base for the coming marketing year is estimated at 2,189,668 pounds. This figure represents a one-percent increase over the 2018–2019 marketing year total allotment base of 2,168,008.

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for established acreage of Scotch spearmint oil, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil over past years. Production has decreased from 1,113,346 pounds produced in 2016, to 817,857 pounds produced in 2017, and to an estimated 671,662 pounds for 2018.

Industry reports also indicate that the relatively low trade demand for Scotch spearmint oil is likely the result of decreased consumer demand for

spearmint-flavored products, especially chewing gum in China and India. Scotch spearmint oil sales have averaged 794,808 pounds per year over the last three years, and 902,076 pounds over the last five years. For the 2018–2019 crop, the Committee estimates trade demand to be 805,000 pounds.

In addition, increasing production of spearmint oil in competing markets, most notably Canada and the U.S. Midwest, has also put downward pressure on the Scotch market.

Given the general decline in demand and anticipated market conditions for the coming year, the Committee decided it was prudent to estimate that the Scotch spearmint oil trade demand for the 2019–2020 marketing year would be 805,000 pounds, unchanged from the prior year. Should the proposed volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that would be required during the 2019–2020 marketing year (590,335 pounds) by subtracting the estimated salable carry-in on June 1, 2019, (214,645) from the estimated trade demand (805,000). This minimum salable quantity represents the minimum amount of Scotch spearmint oil that may be needed to satisfy estimated demand for the coming year. To ensure that the market would be fully supplied, the Committee recommended a 2019–2020 marketing year salable quantity of 832,081 pounds. The recommended salable quantity of 832,081 pounds, combined with an estimated 214,645 pounds of salable quantity carried in from the previous year, would yield a total available supply of 1,046,726 pounds Scotch spearmint oil for the 2019–2020 marketing year, and would leave an estimated 241,726 pounds of salable oil to carry into the 2020–2021 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner. Salable quantities established under volume regulation over the last three seasons have exceeded sales, leading to a

gradual build of Scotch spearmint oil salable carry-in.

The Committee estimates that there will be 215,757 pounds of salable carry-in of Scotch spearmint oil on June 1, 2019. If current market conditions are maintained and the Committee's projections are correct, salable carry-in would increase to 241,726 pounds at the beginning of the 2020–2021 marketing year. This level would be above the quantity that the Committee generally considers favorable (150,000 pounds). However, the Committee anticipates that this higher salable carry-in would be manageable given the expected declining production levels of Scotch spearmint oil. The Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers will not produce enough oil in the 2019–2020 marketing year to fill all of their base allotment. Therefore, it is anticipated that the actual quantity of Scotch spearmint oil carried into the next marketing year will be less than the quantity calculated above.

Spearmint oil held in reserve is oil that has been produced in excess of a producer's marketing year allotment and is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. Oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in the reserve pool, which was completely depleted at the beginning of the 2014–2015 marketing year, has been gradually increasing over the past five years. The Committee reported that there were 71,088 pounds of Scotch spearmint oil held in the reserve pool as of May 31, 2017. The reserve pool increased to 202,638 pounds on May 31, 2018 but is expected to drop back down to 115,473 pounds by May 31, 2019. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, if the industry experiences an unexpected increase in demand.

The Committee recommended a producer allotment percentage of 38 percent for the 2019–2020 marketing year for Scotch spearmint oil. During its October 17, 2018, meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (590,355 pounds) by the total estimated allotment base (2,189,688 pounds), resulting in 27 percent. However, producers and handlers at the meeting indicated that the computed percentage (27 percent) might not adequately supply the potential 2019–2020 Scotch spearmint oil market demand and may

also result in inadequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 38 percent. The total estimated allotment base (2,189,688 pounds) for the 2019–2020 marketing year multiplied by the recommended salable allotment percentage (38 percent) yields 832,081 pounds, which is the recommended salable quantity for the 2019–2020 marketing year.

The 2019–2020 marketing year computational data for the Committee's recommendations is detailed below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2019: 214,645 pounds.* This figure is the difference between the 2018–2019 marketing year total available supply of 1,019,645 pounds and the 2018–2019 marketing year estimated trade demand of 805,000 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2019–2020 marketing year: 805,000 pounds.* This figure was established at the Committee meeting held on October 17, 2018.

(C) *Salable quantity of Scotch spearmint oil required from the 2019–2020 marketing year production: 590,355 pounds.* This figure is the difference between the estimated 2019–2020 marketing year trade demand (805,000 pounds) and the estimated carry-in on June 1, 2019 (214,645 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil production that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated Scotch spearmint oil allotment base of for the 2019–2020 marketing year: 2,189,688 pounds.* This figure represents a one-percent increase over the 2018–2019 total actual allotment base of 2,168,008 pounds, as prescribed by § 985.53(d)(1). The one-percent increase equals 21,680 pounds. This total estimated allotment base is generally revised each year on June 1 in accordance with § 985.53(e).

(E) *Computed Scotch spearmint oil allotment percentage for the 2019–2020 marketing year: 27 percent.* This percentage is computed by dividing the minimum required salable quantity (590,355 pounds) by the total estimated allotment base (2,189,688 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2019–2020 marketing year: 38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (27 percent) and input from producers and handlers at the October 17, 2018, meeting. The recommended 38 percent allotment percentage reflects the Committee's belief that the computed

percentage (27 percent) may not adequately supply anticipated 2019–2020 Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2019–2020 marketing year: 832,081 pounds.* This figure is the product of the recommended salable allotment percentage (38 percent) and the total estimated allotment base (2,189,688 pounds) for the 2019–2020 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2019–2020 marketing year: 1,046,726 pounds.* This figure is the sum of the 2019–2020 marketing year recommended salable quantity (832,081 pounds) and the estimated carry-in on June 1, 2019 (214,645 pounds).

For the reasons stated above, the Committee believes that the recommended salable quantity and allotment percentage would adequately satisfy trade demand, would result in a reasonable carry-in for the following year, and would contribute to the orderly marketing of Scotch spearmint oil.

Native Spearmint Oil

The Committee recommended a Native spearmint oil salable quantity of 1,395,813 pounds and an allotment percentage of 56 percent for the 2019–2020 marketing year. These figures are, respectively, 87,866 pounds and 3 percentage points higher than the levels established for the 2018–2019 marketing year.

The Committee utilized handlers' anticipated sales estimates of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2018 production will total 1,477,128 pounds, similar to last year's production but down from 1,694,684 pounds produced in 2016. Committee figures show that total Native spearmint acres remained relatively static and that the estimated yield, at 167.4 pounds per acre, was up from 160.9 pounds per acre in 2017. Sales of Native spearmint oil for the 2017–2018 marketing year spiked, up 21 percent from the previous year to 1,565,515 pounds. Sales for the current marketing year have cooled a bit, but the Committee still estimates sales through the 2018–2019 marketing year of 1,450,000 pounds.

The Committee expects that only 8,005 pounds of salable Native

spearmint oil from prior years will be carried into the 2019–2020 marketing year. This amount is down from the 48,062 pounds of salable oil carried into the 2018–2019 marketing year, and 143,011 pounds carried into the 2017–2018 marketing year.

Further, the Committee estimates that there will be 1,150,927 pounds of Native spearmint oil in the reserve pool at the beginning of the 2019–2020 marketing year. This figure is 130,344 pounds higher than the quantity of reserve pool oil held by producers the previous year and is consistent with the gradual increase in reserves experienced over the past three marketing years.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as their main source of high-quality Native spearmint oil, but demand may be at lower quantities than the past year moving forward in response to long-term market factors. A sharp spike in demand for Native spearmint oil was experienced by handlers late in the 2017–2018 marketing year, spurred by the popularity of a new product in the market. This sharp spike in demand caused the remaining available 2017–2018 marketing year salable quantity to be depleted. While sales in the 2018–2019 marketing year are expected to come down from the prior year spike, the Committee still anticipates demand at relatively high levels.

The Committee estimates the 2019–2020 marketing year Native spearmint oil trade demand to be 1,400,000 pounds. This figure is based on input provided by producers at six production area meetings held in mid-October 2018, as well as estimates provided by handlers and other meeting participants at the October 17, 2018, meeting. This figure represents a decrease of 50,000 pounds from the previous year's estimate. The average estimated trade demand for Native spearmint oil derived from the producer meetings was 1,380,000 pounds, whereas the handlers' estimates ranged from 1,300,000 to 1,500,000 pounds. The average of Native spearmint oil sales over the last three years is 1,364,782 pounds. The quantity marketed over the most recent full marketing year, 2017–2018, was 1,565,515 pounds. However, the Committee considers that year to be an anomaly. The Committee chose to be slightly conservative in the establishment of its trade demand estimate for the 2019–2020 marketing year to avoid oversupplying the market.

The estimated 2019–2020 marketing year carry-in of 8,005 pounds of Native spearmint oil, plus the recommended salable quantity of 1,395,813 pounds,

would result in an estimated total available supply of 1,403,818 pounds of oil during the 2019–2020 marketing year. With the corresponding estimated trade demand of 1,400,000 pounds, the Committee projects that 3,818 pounds of oil will be carried into the 2019–2020 marketing year, resulting in a decrease of 4,187 pounds year-over-year. The Committee estimates that there will be 1,150,927 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2019–2020 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released to satisfy that demand.

The Committee recommended a producer allotment percentage of 56 percent for the 2019–2020 marketing year. During its October 17, 2018, meeting, the Committee calculated an initial producer allotment percentage by dividing the minimum required salable quantity (1,391,995 pounds) by the total estimated allotment base (2,492,523 pounds), resulting in 55.8 percent. However, producers and handlers at the meeting expressed that the computed percentage of 55.8 percent may not adequately supply the potential 2019–2020 Native spearmint oil market demand or result in adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 56 percent. The total estimated allotment base (2,492,523 pounds) for the 2019–2020 marketing year multiplied by the recommended salable allotment percentage (56 percent) yields 1,395,813 pounds, the recommended salable quantity for the year.

The 2019–2020 marketing year computational data for the Committee's recommendations is further outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2019: 8,005 pounds.* This figure is the difference between the revised 2018–2019 marketing year total available supply of 1,458,005 pounds and the revised 2018–2019 marketing year estimated trade demand of 1,450,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2019–2020 marketing year: 1,400,000 pounds.* This estimate was established by the Committee at the October 17, 2018, meeting.

(C) *Salable quantity of Native spearmint oil required from the 2019–2020 marketing year production: 1,391,995 pounds.* This figure is the difference between the estimated 2019–2020 marketing year estimated trade demand (1,400,000 pounds) and the

estimated carry-in on June 1, 2019 (8,005 pounds). This is the minimum amount of Native spearmint oil that the Committee believes would be required to meet the anticipated 2019–2020 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2019–2020 marketing year: 2,492,523 pounds.* This figure represents a one-percent increase over the 2018–2019 total actual allotment base of 2,467,845 pounds as prescribed in § 985.53(d)(1). The one-percent increase equals 24,678 pounds of oil. This estimate is generally revised each year on June 1, due to adjustments resulting from the bona fide effort production provisions of § 985.53(e).

(E) *Computed Native spearmint oil allotment percentage for the 2019–2020 marketing year: 55.8 percent.* This percentage is calculated by dividing the required salable quantity (1,391,995 pounds) by the total estimated allotment base (2,492,523 pounds) for the 2019–2020 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2019–2020 marketing year: 56 percent.* This is the Committee's recommendation based on the computed allotment percentage (55.8 percent) and input from producers and handlers at the October 17, 2018, meeting. The recommended 56 percent allotment percentage is also based on the Committee's belief that the computed percentage (55.8 percent) may not adequately supply the potential market for Native spearmint oil in the 2019–2020 marketing year.

(G) *Recommended Native spearmint oil 2019–2020 marketing year salable quantity: 1,395,813 pounds.* This figure is the product of the recommended allotment percentage (56 percent) and the total estimated allotment base (2,492,523 pounds). This amount is slightly less than the estimated trade demand for the 2019–2020 marketing year but could be increased as needed through an intra-seasonal increase in the salable quantity and allotment percentage.

(H) *Estimated available supply of Native spearmint oil for the 2019–2020 marketing year: 1,403,808 pounds.* This figure is the sum of the 2019–2020 recommended salable quantity (1,395,813 pounds) and the estimated carry-in on June 1, 2019 (8,005 pounds).

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 832,081 pounds and 38 percent, and 1,395,813 pounds and 56 percent, respectively, would match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in

inventories and prices. This proposed rule, if finalized, would be similar to regulations issued in prior seasons.

The salable quantities in this proposed rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage. The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs and under the Committee's direction.

In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2019–2020 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of the proposed salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This proposal would also provide producers with information regarding the amount of spearmint oil that should be produced for the 2019–2020 season to meet anticipated market demand.

Initial Regulatory Flexibility Act

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 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 the 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 approximately 33 producers and 90 producers of Scotch and Native spearmint oil, respectively, in the regulated production area and approximately 8 spearmint oil handlers subject to regulation under the Order. 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 recent producer prices for spearmint oil range from \$15.50 to \$18.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2017 U.S. season average spearmint oil producer price per pound was \$16.20. Multiplying \$16.20 per pound by 2016–17 spearmint oil utilization of 2,186,751 million pounds yields a crop value estimate of about \$35.4 million. Total 2016–17 spearmint oil utilization, reported by the Committee, is 621,236 pounds and 1,565,515 pounds for Scotch and Native spearmint oil, respectively.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the \$16.20 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 11 of the 33 Scotch spearmint oil producers and 34 of the 90 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Multiplying 1.20 by the 2016 producer price of \$16.20 yields a handler f.o.b. price per pound estimate of \$19.44.

Multiplying this handler f.o.b price by spearmint oil utilization of 2,186,751 pounds results in an estimated handler-level spearmint oil value of \$42.5 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about \$5.3 million, which is below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is likely that at least two of the eight handlers had 2017–2018 marketing year spearmint oil sales value that exceeded the SBA threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as large entities and the majority of handlers of spearmint oil may be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2019–2020 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this proposal is provided in §§ 985.50, 985.51, and 985.52.

The Committee estimated trade demand for the 2019–2020 marketing year for both classes of oil at 2,205,000 pounds and expects that the combined salable carry-in will be 222,650 pounds. The combined required salable quantity is 1,982,350 pounds. Under volume regulation, total sales of spearmint oil by producers for the 2019–2020 marketing year would be held to 2,450,544 pounds (the recommended salable quantity for both classes of spearmint oil of 2,227,894 pounds plus 222,650 pounds of carry-in). This total available supply of 2,450,544 pounds should be more than adequate to supply the 2,205,000 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2018, the total reserve pool for both classes of spearmint oil stood at 1,223,221 pounds. Furthermore, that quantity is expected to rise over the course of the 2018–2019 marketing year to 1,266,400. Should trade demand increase unexpectedly during the 2019–2020 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The recommended allotment percentages, upon which 2019–2020 producer allotments are based, are 38 percent for Scotch spearmint oil and 56 percent for Native spearmint oil. Without volume regulation, producers

would not be held to these allotment levels, and could sell unrestricted quantities of spearmint oil. The USDA econometric model estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about \$2.20 per pound because of the higher quantities of spearmint oil that would be produced and marketed without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in 2019–2020 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and would not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee rejected the idea of not regulating any volume for either class of spearmint oil because of the severe, price-depressing effects that would likely occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended for both classes of spearmint oil. Ultimately, the action taken by the Committee was to increase the salable quantity and allotment percentage for both Scotch and Native spearmint oil from the levels established for the 2018–2019 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages recommended would achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages proposed herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2019–2020 and future marketing years.

Costs to producers and handlers, large and small, resulting from this proposal are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

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, Specialty Crops. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would establish the salable quantities and allotment percentages for Scotch spearmint oil and Native spearmint oil produced in the Far West during the 2019–2020 marketing year. Accordingly, this proposal would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or 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.

In addition, the Committee's meeting was widely publicized throughout the

spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 17, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

- 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

- 2. A new § 985.234 is added to read as follows:

§ 985.234 Salable quantities and allotment percentages—2019–2020 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2019, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 832,081 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,395,813 pounds and an allotment percentage of 56 percent.

§ 985.236 [Removed]

- 3. Remove § 985.236.

Dated: February 12, 2019

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019-02514 Filed 2-14-19; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2019-0020; Product Identifier 2018-NM-144-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2018-19-18, which applies to certain Airbus SAS Model A300 B4-603, B4-620, and B4-622 airplanes; Model A300 B4-600R series airplanes; Model A300 C4-605R Variant F airplanes; and Model A300 F4-605R airplanes. AD 2018-19-18 requires, depending on airplane configuration, a modification of certain angle fitting attachment holes; repetitive inspections for cracking of certain holes of the internal lower angle fitting web, certain holes of the internal lower angle fitting horizontal splicing, the aft bottom panel, and a certain junction area; and related investigative and corrective actions if necessary. Since we issued AD 2018-19-18, we have determined that additional airplanes are affected by the unsafe condition. This proposed AD would retain the actions required by AD 2018-19-18, expand the applicability, and, for certain airplanes, would require repetitive inspections for cracking of certain holes of the center wing box (CWB) lower angle fittings and the CWB lower panel, and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 1, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the “Related IBR material under 1 CFR part 51” section in **SUPPLEMENTARY INFORMATION**, contact European Aviation Safety Agency (EASA), Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email ADs@easa.europa.eu; internet 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-2019-0020; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2019-0020; Product Identifier 2018-NM-144-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing

date and may amend this NPRM based on those comments.

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

Discussion

We issued AD 2018-19-18, Amendment 39-19418 (83 FR 49793, October 3, 2018) (“AD 2018-19-18”), for certain Airbus SAS Model A300 B4-603, B4-620, and B4-622 airplanes; Model A300 B4-600R series airplanes; Model A300 C4-605R Variant F airplanes; and Model A300 F4-605R airplanes. AD 2018-19-18 requires, depending on airplane configuration, a modification of certain angle fitting attachment holes; repetitive inspections for cracking of certain holes of the internal lower angle fitting web, certain holes of the internal lower angle fitting horizontal splicing, the aft bottom panel, and a certain junction area; and related investigative and corrective actions if necessary. AD 2018-19-18 resulted from reports of cracking on a certain frame (FR) angle fitting. We issued AD 2018-19-18 to address cracking of the FR47 angle fitting, which could result in reduced structural integrity of the airplane.

Actions Since AD 2018-19-18 Was Issued

We have determined that additional airplanes are affected by the unsafe condition. Airbus SAS Model A300 B4-622R and Model A300 F4-600R series airplanes that have accomplished Airbus Modification 12171 and Airbus Modification 12249 need to be inspected in order to address the unsafe condition.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0229, dated October 23, 2018 (“EASA AD 2018-0229”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus SAS Model A300 B4-603, B4-620, B4-622, B4-605R, B4-622R, C4-605R Variant F, F4-605R, and F4-622R airplanes. The MCAI states:

Prompted by cracks found on CWB FR47 angle fittings, Airbus issued SB [service bulletin] A300-57-6049, SB A300-57-6050, and SB A300-57-6086.

These cracks, if not detected and corrected, could affect the structural integrity of the CWB of the aeroplane.

Consequently, DGAC [Direction Générale de l'Aviation Civile] France published AD

94–241–170, AD 1999–147–279, AD 2000–533–328 and AD F–2004–159 (EASA approval 2004–9779), each [DGAC France] AD superseding the previous one, to require repetitive high frequency eddy current (HFEC) rotating probe inspections of the FR47 internal lower angle fitting.

After DGAC France AD F–2004–159 was issued, cracks were reportedly found on the horizontal flange of the FR47 internal corner angle fitting during accomplishment of routine maintenance structural inspection and modification in accordance with the instructions of Airbus SB A300–57–6050. Prompted by these findings, Airbus reviewed and amended the inspection programme for the internal lower angle fitting flange (horizontal face).

Consequently, EASA issued AD 2012–0092 [which corresponds to FAA AD 2014–20–18, Amendment 39–17991 (79 FR 65879, November 6, 2014) (“AD 2014–20–18”)] retaining the requirements of DGAC France AD F–2004–159, which was superseded, and requiring additional repetitive inspections of the CWB lower panel through the ultrasonic method and, depending on findings, re-installation of removed fasteners in transition fit instead of interference. In addition, DGAC France had previously issued AD F–2005–124 (EASA approval 2005–6071) to require CWB FR47 angle fittings inspections for A300 F4–608ST aeroplanes, in accordance with Airbus SB A300–57–9001 and SB A300–57–9002.

Following the discovery of numerous cracks during the accomplishment of SB A300–57–6049 and SB A300–57–6086 inspections, Airbus developed in a first step a new (recommended) modification (Airbus SB A300–57–6113), defined associated inspections programme and methods (ultrasonic/radiographic), and published SB A300–57–6119. Consequently, EASA issued AD 2016–0198, retaining the requirements of EASA AD 2012–0092, which was superseded, to require repetitive inspections for post-SB A300–57–6113 aeroplanes.

After EASA AD 2016–0198 was issued, Airbus revised in a second step the inspection programme for A300–600 pre-SB A300–57–6113 and A300–600ST aeroplanes, reducing inspection thresholds and intervals. At this opportunity, the existing ultrasonic inspection of the CWB lower panel for A300–600 aeroplanes was added for A300–600ST aeroplanes. Consequently, EASA issued AD 2017–0210 [which corresponds to FAA AD 2018–19–18] retaining the requirements of EASA AD 2016–0198 for A300–600 aeroplanes and DGAC France AD F–2005–124 for A300–600ST aeroplanes, which were both superseded, to include these new requirements.

Since EASA AD 2017–0210 was issued, Airbus revised in a third step the inspection programme for A300–600 post-mod 12171 and post-mod 12249 reducing inspection thresholds and intervals, and introducing the CWB lower panel inspection. Airbus published SB A300–57–6121, superseding Airworthiness Limitation Items (ALI) tasks 571012 & 571014.

For the reason described above, this [EASA] AD retains the requirements of EASA

AD 2017–0210, which is superseded, and expands the Applicability (Group 3) to include post-mod 12171 and post-mod 12249 aeroplanes.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0229, dated October 23, 2018, describes procedures for a modification of the angle fitting attachment holes, an inspection of certain holes of the internal lower angle fitting web for cracking, an inspection of certain holes of the internal lower angle fitting horizontal splicing for cracking, an inspection of the aft bottom panel for cracking, an inspection of the FR47/Rib 1 junction area for cracking, an inspection of certain holes of the CWB lower angle fittings for cracking, an inspection of the CWB lower panel for cracking, and corrective actions. The corrective actions include a rotating probe inspection for cracking, replacing damaged fasteners, reaming and drilling holes, installing the next nominal fastener for oversized bore holes, and repairing cracks. 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.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0229 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2018–0229, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA

AD 2018–0229 that is required for compliance with EASA AD 2018–0229 will be available on the internet <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0020 after the FAA final rule is published.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2018–19–18, this proposed AD would retain all of the requirements of AD 2018–19–18. Those requirements are referenced in EASA AD 2018–0229, which, in turn, is referenced in paragraph (g) of this proposed AD.

Differences Between This Proposed AD and the MCAI

EASA AD 2018–0229 does not specify credit for actions previously performed with certain service information. However, this proposed AD allows for credit for actions required by paragraph (1) of EASA AD 2018–0229, if those actions were performed before December 19, 2005 (the effective date of FAA AD 2005–23–08, Amendment 39–14366 (70 FR 69056, November 14, 2005)) using Airbus Service Bulletin A300–57–6050, Revision 02, dated February 10, 2000. We consider those methods to be adequate to address the modification of the angle fitting attachment holes on the left hand and right hand sides by cold expansion required by this proposed AD.

Relationship Between Proposed AD and AD 2014–20–18, Amendment 39–17991 (79 FR 65879, November 6, 2014) (“AD 2014–20–18”)

Paragraph (o) of AD 2018–19–18 specifies that accomplishing certain actions terminates all requirements of AD 2014–20–18. Because this proposed AD will supersede AD 2018–19–18, this terminating action is retained in this proposed AD and instead refers to the accomplishment of the corresponding actions in EASA AD 2018–0229. Therefore, paragraph (i) of this proposed AD specifies that accomplishment of the modification required by paragraph (1) of EASA AD 2018–0229 and accomplishment of the initial inspections required by paragraphs (3), (4), and (5) of EASA AD 2018–0229 terminate all requirements of AD 2014–20–18.

Costs of Compliance

We estimate that this proposed AD affects 65 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–19–18.	Up to 727 work-hours × \$85 per hour = \$61,795.	Up to \$3,370	Up to \$65,165	Up to \$4,235,725.
New proposed actions	242 work-hours × \$85 per hour = \$20,570.	\$100	\$20,670	\$1,343,550.

* Table does not include estimated costs for reporting.

We estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is \$85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be \$5,525, or \$85 per product.

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed 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

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–19–18, Amendment 39–19418 (83 FR 49793, October 3, 2018), and adding the following new AD:

Airbus SAS: Docket No. FAA–2019–0020; Product Identifier 2018–NM–144–AD.

(a) Comments Due Date

We must receive comments by April 1, 2019.

(b) Affected ADs

(1) This AD replaces AD 2018–19–18, Amendment 39–19418 (83 FR 49793, October 3, 2018) ("AD 2018–19–18").

(2) This AD affects AD 2014–20–18, Amendment 39–17991 (79 FR 65879, November 6, 2014) ("AD 2014–20–18").

(c) Applicability

This AD applies to Airbus SAS Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0229, dated October 23, 2018 ("EASA AD 2018–0229").

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking on the frame (FR) 47 angle fitting. We are issuing this AD to address cracking of the FR47 angle fitting, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0229.

(h) Exceptions to EASA AD 2018–0229

(1) For purposes of determining compliance with the requirements of this AD:

Where EASA AD 2018–0229 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2018–0229 does not apply to this AD.

(3) Where Note 1 of EASA AD 2018–0229 specifies the grace period to be counted from January 6, 2001, this AD requires the grace period to be counted from December 19, 2005 (the effective date of AD 2005–23–08, Amendment 39–14366 (70 FR 69056, November 14, 2005) (“AD 2005–23–08”).

(4) Where Note 2 and Note 4 of EASA AD 2018–0229 specify the grace period to be counted from November 7, 2017, without exceeding certain inspection thresholds and intervals, the grace period for this AD is within 12 months after November 7, 2018 (the effective date of AD 2018–19–18).

(5) Paragraph (11) of EASA AD 2018–0229 specifies to report all inspection results to Airbus. For this AD, report all inspection results to Airbus Service Bulletin Reporting Online Application on Airbus World (<https://w3.airbus.com/>) at the applicable time specified in paragraph (h)(5)(i) or (h)(5)(ii) of this AD. The report must include the inspection results, the method of inspection, the airplane serial number, and the number of flight cycles and flight hours on the airplane.

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

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

(i) Terminating Action for AD 2014–20–18

Accomplishment of the action required by paragraph (1) of EASA AD 2018–0229 and the initial inspections required by paragraphs (3), (4), and (5) of EASA AD 2018–0229 terminates all requirements of AD 2014–20–18.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (1) of EASA AD 2018–0229, if those actions were performed before December 19, 2005 (the effective date of AD 2005–23–08) using Airbus Service Bulletin A300–57–6050, Revision 02, dated February 10, 2000.

(k) 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 (l)(2) of this AD. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(i) 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.

(ii) AMOCs approved previously for AD 2018–19–18 are approved as AMOCs for the corresponding provisions of EASA AD 2018–0229 that are required by paragraph (g) of this AD.

(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)*: For any service information referenced in EASA AD 2018–0229 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

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

(l) Related Information

(1) For information about EASA AD 2018–0229, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email ADs@easa.europa.eu; Internet 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 2018–0229 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0020.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer,

International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

Issued in Des Moines, Washington, on February 1, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–02552 Filed 2–14–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–1102]

RIN 1625–AA08

Special Local Regulation; Chesapeake Bay, Between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters located between Sandy Point, Anne Arundel County, MD, and Kent Island, Queen Anne’s County, MD, during a paddling event on June 1, 2019. In the case of inclement weather, the paddling event is scheduled for June 2, 2019. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 18, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–1102 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
 COTP Captain of the Port
 DHS Department of Homeland Security
 FR Federal Register
 NPRM Notice of proposed rulemaking
 PATCOM Coast Guard Patrol Commander
 § Section
 U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On December 7, 2018, ABC Events, Inc. of Arnold, MD, notified the Coast Guard that it will be conducting the Bay Bridge Paddle from 8 a.m. to noon on June 1, 2019. The fourth annual kayak and stand up paddle board event for elite and intermediate paddlers includes up to 500 paddlers in two classes operating on two race courses in the Chesapeake Bay, under and between the north and south bridges that consist of the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD, and Kent Island, Queen Anne's County, MD. The first course, for elite paddlers, is a 9-statute mile/14.5-kilometer race course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, proceeds southerly along the shoreline to a point on the course located between north bridge piers 13 and 13A, then easterly along and between the bridges toward the eastern shore at Kent Island and turns around upon reaching a point near Kent Island, then proceeds westerly along and between the bridges toward the western shore, turns upon reaching a point on the course located between north bridge piers 24 and 25, proceeds northerly to the Sandy Point Shoal Lighthouse, and proceeds westerly to a finish at the east beach area of Sandy Point State Park. The second course, for intermediate paddlers, is a 3.1-statute mile/5-kilometer course that starts at the east beach area of Sandy Point State Park at Annapolis, MD, and follows the elite paddlers to the north bridge, then easterly along and between the bridges toward the eastern shore at Kent Island and turns northerly upon reaching a point on the course located between north bridge piers 24 and 25, and proceeds to a finish at the east beach area of Sandy Point State Park. In the case of inclement weather, the event is scheduled from 8 a.m. to noon on June 2, 2019. Hazards from the paddle race include numerous event participants crossing designated shipping channels and interfering with vessels intending to operate within those channels. The COTP Maryland-National Capital

Region has determined that potential hazards associated with the paddle race would be a safety concern for anyone intending to operate within certain waters of the Chesapeake Bay between Sandy Point and Kent Island, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish temporary special local regulations from 7 a.m. to 1 p.m. on June 1, 2019, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on June 2, 2019. The regulated area would cover all navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N, longitude 076°23'47.93" W; thence eastward to latitude 39°01'02.08" N, longitude 076°22'40.24" W; thence southeastward to eastern shoreline at latitude 38°59'13.70" N, longitude 076°19'58.40" W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N, longitude 076°24'28.36" W; thence southward to latitude 38°59'38.36" N, longitude 076°23'59.67" W; thence eastward to latitude 38°59'26.93" N, longitude 076°23'25.53" W; thence eastward to the eastern shoreline at latitude 38°58'40.32" N, longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD.

The proposed duration special local regulations and size of the of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after races, scheduled from 8 a.m. until noon on June 1, 2019 (rain date of June 2, 2019). The COTP and PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or PATCOM. If a person or vessel fails to follow such directions, the Coast Guard

may expel them from the area, issue them a citation for failure to comply, or both.

Except for Bay Bridge Paddle participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as Official Patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official Patrol vessels will direct spectator vessels while within the regulated area. Vessels would be prohibited from loitering within the navigable channel.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the

regulated area, which would impact a small designated area of the Chesapeake Bay for six hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the COTP or Coast Guard Patrol Commander deems it safe to do so.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of a temporary special local regulation lasting for approximately six hours. The category of water activities includes but is not limited to sail boat regattas, boat

parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://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 or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–1102 to read as follows:

§ 100.501T05–1102 Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) *Regulated area.* The following location is a regulated area: All navigable waters of the Chesapeake Bay, adjacent to the shoreline at Sandy Point State Park and between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges, from shoreline to shoreline, bounded to the north by a line drawn from the western shoreline at latitude 39°01'05.23" N, longitude 076°23'47.93" W; thence eastward to latitude 39°01'02.08" N, longitude 076°22'40.24" W; thence southeastward to eastern shoreline at latitude 38°59'13.70" N, longitude 076°19'58.40" W; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'17.08" N, longitude 076°24'28.36" W; thence southward to latitude 38°59'38.36" N, longitude 076°23'59.67" W; thence eastward to latitude 38°59'26.93" N, longitude 076°23'25.53" W; thence eastward to the eastern shoreline at latitude 38°58'40.32" N, longitude 076°20'10.45" W, located between Sandy Point and Kent Island, MD. All coordinates reference North American Datum 83 (NAD 1983).

(b) *Definitions.* As used in this section:

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on the COTP's behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means a vessel assigned or approved by the

Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Bay Bridge Paddle event or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as a participant or assigned as an official patrol.

(c) *Special local regulations:* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area must immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter the regulated area or pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at a safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on

Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 1 p.m. on June 1, 2019, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on June 2, 2019.

Dated: February 11, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–02466 Filed 2–14–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 2 and 11**

[Docket No. PTO–T–2018–0021]

RIN 0651–AD30

Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) proposes to amend the Rules of Practice in Trademark Cases and the rules regarding Representation of Others Before the United States Patent and Trademark Office to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the United States (U.S.) or its territories (hereafter foreign applicants, registrants, or parties) to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. (including the District of Columbia and any Commonwealth or territory of the U.S.). A requirement that such foreign applicants, registrants, or parties be represented by a qualified U.S. attorney will instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

DATES: Comments must be received by March 18, 2019 to ensure consideration.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to TMFRNotices@uspto.gov. Written comments also may be submitted by mail to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal at <https://www.regulations.gov>. See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2018-0021).

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the internet because the Office may easily share such comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in portable document format or DOC file format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection on the USPTO's website at <https://www.uspto.gov>, on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, TMPolicy@uspto.gov, (571) 272-8946.

SUPPLEMENTARY INFORMATION: The USPTO proposes to revise the rules in parts 2 and 11 of title 37 of the Code of Federal Regulations to require foreign applicants, registrants, or parties to a proceeding to be represented by an attorney, as defined in § 11.1, 37 CFR 11.1, that is, an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory (including the District of Columbia and any Commonwealth or

territory) and who is qualified under § 11.14(a), 37 CFR 11.14(a), to represent others before the Office in trademark matters. A requirement that such foreign applicants, registrants, or parties be represented by a qualified U.S. attorney will (1) instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

I. Integrity of the U.S. Trademark Register

The trademark register must accurately reflect marks that are actually in use in commerce in the U.S. for the goods/services identified in the registrations. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to U.S. commerce by allowing businesses to strengthen and safeguard their brands and related investments.

The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or choosing a different mark and changing business plans regarding its mark. In addition, such persons may incur costs and burdens unnecessarily if the disclosed registered mark is not actually in use in U.S. commerce, or is not in use in commerce in connection with all the goods/services identified in the registration. An accurate and reliable trademark register helps avoid such needless costs and burdens.

A valid claim of use made as to a registered mark likewise benefits the registrant. Fraudulent or inaccurate claims of use jeopardize the validity of any resulting registration and may render it vulnerable to cancellation. Furthermore, trademark documents submitted in support of registration require statutorily prescribed averments and must be signed in accordance with § 2.193(e)(1), 37 CFR 2.193(e)(1). If signed by a person determined to be an unauthorized signatory, a resulting registration may be invalid.

Therefore, the USPTO anticipates that implementation of the proposed rule would have the benefit of generally reducing costs to applicants, registrants, and other parties and providing greater value to consumers who rely on registered marks.

As discussed below, in the past few years, the USPTO has seen many instances of unauthorized practice of law (UPL) where foreign parties who are not authorized to represent trademark applicants are improperly representing foreign applicants before the USPTO. As a result, increasing numbers of foreign applicants are likely receiving inaccurate or no information about the legal requirements for trademark registration in the U.S., such as the standards for use of a mark in commerce, who can properly aver to matters and sign for the mark owner, or even who the true owner of a mark is under U.S. law. This practice raises legitimate concerns that affected applications and any resulting registrations are potentially invalid, and thus negatively impacts the integrity of the trademark register.

II. Enforce Compliance With U.S. Statutory and Regulatory Requirements

The proposed requirement for representation by a qualified U.S. attorney is also necessary to enforce compliance by all foreign applicants, registrants, and parties with U.S. statutory and regulatory requirements in trademark matters. It will not only aid the USPTO in its efforts to improve and preserve the integrity of the U.S. trademark register, but will also ensure that foreign applicants, registrants, and parties are assisted only by authorized practitioners who are subject to the USPTO's disciplinary rules.

The requirement for representation by a qualified U.S. attorney is being proposed in response to the increasing problem of foreign trademark applicants who purportedly are pro se (*i.e.*, one who does not retain a lawyer and appears for himself or herself) and who are filing inaccurate and possibly fraudulent submissions that violate the Trademark Act (Act) and/or the USPTO's rules. For example, such foreign applicants file applications claiming use of a mark in commerce, but frequently support the use claim with mocked-up or digitally altered specimens that indicate the mark may not actually be in use. Many appear to be doing so on the advice, or with the assistance, of foreign individuals and entities who are not authorized to represent trademark applicants before the USPTO. This practice undermines the accuracy and integrity of the U.S.

trademark register and its utility as a means for the public to reliably determine whether a chosen mark is available for use or registration, and places a significant burden on the trademark examining operation.

Current Mechanisms and Sanctions are Inadequate

(1) Show-Cause Authority: Under 35 U.S.C. 3(b)(2)(A), the Commissioner for Trademarks (Commissioner) possesses the authority to manage and direct all aspects of the activities of the USPTO that affect the administration of trademark operations. The Commissioner may use that authority to investigate and issue an order requiring an applicant to show cause why the applicant’s representative, or the applicant itself, should not be sanctioned under § 11.18(c), 37 CFR 11.18(c), for presenting a paper to the USPTO in violation of § 11.18(b), 37 CFR 11.18(b). However, given the location of foreign applicants and those acting on their behalf, as well as potential language barriers, the show-cause authority has rarely been successful in resolving the underlying issues. Although all those who sign documents in trademark matters before the USPTO do so subject to criminal penalties for knowing and willful false statements made to a government agency under 18 U.S.C. 1001, the criminal perjury prosecution option under 18 U.S.C. 1001 is similarly difficult to enforce against those who are not subject, or are not easily subject, to U.S. jurisdiction. Further, proof to support such sanctions under § 11.18 is often difficult to obtain. For these primary reasons, when a foreign applicant fails to comply with statutory and regulatory requirements in ex parte examination, it has been challenging and, in some cases, impossible for the Commissioner to use her show-cause authority to impose the sanctions available under § 11.18(c).

(2) USPTO Disciplinary Authority Under 35 U.S.C. 32: Requiring foreign applicants, registrants, and parties to retain U.S. counsel in all trademark matters before the USPTO will likely reduce the instances of UPL and misconduct. In addition, when UPL and/or misconduct does occur, requiring foreign applicants, registrants, and parties to retain U.S. counsel will enable the Office of Enrollment and

Discipline (OED) to more effectively pursue those who are engaged in the UPL and/or misconduct. OED’s disciplinary jurisdiction extends to a “Practitioner,” as that term is defined in § 11.1, 37 CFR 11.1, or a non-practitioner who offers legal services to people seeking to register trademarks with the USPTO. For practitioners, OED may investigate and institute formal disciplinary proceedings, which can result in discipline of the practitioner, including: (1) Exclusion from practice before the Office; (2) suspension from practice before the Office; (3) reprimand or censure; or (4) probation.

When formal discipline is issued against a U.S. practitioner, OED may also notify other federal agencies and the U.S. state bar(s) where the practitioner is licensed and/or authorized to practice law, as appropriate. A number of states have criminal statutes penalizing UPL. Depending on the state, the state bar, consumer-protection arm of the state’s attorney office, and/or state consumer-protection agency may investigate UPL and take action to protect the public. Additionally, consumer-protection organizations and law-enforcement agencies can investigate possible civil or criminal fraud at the federal and state level. OED’s ability to refer a discipline matter to a state bar for further action or to a federal or state consumer-protection agency, or law-enforcement agency, thus effectively deters disciplined practitioners from violating the terms of their disciplinary orders.

However, the threat of a claim of UPL has not been equally effective with foreign applicants and the unqualified foreign individuals, attorneys, or firms advising them. Although the USPTO investigates possible UPL by such foreign parties, because these parties are not practitioners authorized to practice before the USPTO, the absence of any realistic threat of disciplinary action has impeded the USPTO’s efforts to deter foreign parties from engaging in UPL or violating a USPTO exclusion order. In addition, while the USPTO can send a letter to a foreign government regarding the USPTO’s exclusion order, foreign government officials have great discretion regarding whether to pursue further sanctions against their own citizens. Further, since foreign parties are representing foreign applicants, there may be few U.S. stakeholders

directly affected by the unauthorized practice of law by the foreign party. There is little incentive for a state or federal law-enforcement or consumer-protection agency to take action against a foreign party engaged in UPL to protect U.S. interests, or to pursue further action with consumer-protection agencies in other countries where the foreign national does business. Moreover, the threat of criminal perjury prosecution in U.S. courtrooms does not have the same deterrent effect for foreign nationals as it does for U.S. nationals and domiciles.

As a practical matter, even if U.S. law enforcement is able to devote resources toward prosecution of a foreign national for a violation of 18 U.S.C. 1001, exerting jurisdiction over such a party is not always possible. Furthermore, many foreign unauthorized parties acting on behalf of foreign applicants and registrants who have been excluded by a Commissioner’s order typically continue to engage in UPL before the USPTO, often increasing the scale of their efforts and employing tactics intended to circumvent the USPTO’s rules.

Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Further, because it would result in a more accurate and reliable trademark register, fewer U.S. applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

Surge in Foreign Filings

Contributing to concerns regarding UPL, in recent years the USPTO has experienced a significant surge in foreign filings, with the number of applications from foreign applicants increasing as a percentage of total filings, as shown in the following table. The numbers in parentheses indicate the number of applications represented by each percentage:

Filings from foreign or U.S. applicants as a percentage of total filings *	FY15	FY16	FY17
Foreign	19% (70,853)	22% (87,706)	26% (115,402)
U.S.	81% (301,098)	78% (306,281)	74% (320,885)

* Data as of 12/10/2018.

The USPTO predicts that the number of foreign filings will continue to rise based on a variety of economic factors, including the strength of the U.S. economy. This growth is coupled with a significant growth in the number of

filings by foreign pro se applicants in FY15 through FY17, especially as compared with filings by U.S. pro se applicants. The information shown below reflects the representation status at the time the USPTO electronic record

was searched to obtain the data. Representation status may change over the course of prosecution. However, system limitations only permit the USPTO to retrieve representation status at the time a search is done.

Filings from foreign or U.S. applicants—Representation Status *	FY15	FY16	FY17
U.S.—Pro Se	25.3% (76,140)	27.2% (83,161)	28.5% (91,593)
U.S.—Represented	74.7% (224,958)	72.8% (223,120)	71.5% (229,292)
Foreign—Pro Se	25.4% (17,967)	35.9% (31,475)	44.0% (50,742)
Foreign—Represented	74.6% (52,886)	64.1% (56,231)	56.0% (64,660)

* Data as of 12/10/2018.

Currently, the USPTO is in the process of addressing numerous instances of UPL by foreign parties who engage in tactics designed to circumvent USPTO rules. When the USPTO has identified UPL by foreign parties in an application, the USPTO has sent information to the applicant’s address of record informing the applicant that its appointed representative has been “excluded” from practice before the USPTO and cannot represent the applicant in the matter. In addition, the USPTO has published the orders excluding foreign unauthorized individuals and entities on its website and suggested that applicants review all application submissions previously submitted on their behalf. However, in many applications, the address information for the applicant is not legitimate (*i.e.*, the address is for the unauthorized individual or entity representing the applicant) or is incomplete or inaccurate, and the USPTO cannot be sure that the affected applicants receive this information. This fact raises concerns that the applications are potentially invalid because they were signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark, which forms the underlying statutory basis for federal registration.

Efforts to educate foreign applicants about UPL or to impose effective sanctions against the foreign unauthorized individuals or entities have proved ineffective. The problem of foreign applicants who violate U.S. legal and regulatory requirements in trademark matters and do so largely on the advice of foreign unauthorized individuals or entities grows each month. Within the last few years, the scale of the problem has become massive, with the estimated number of total tainted applications now in the tens of thousands. It also is becoming increasingly difficult for the USPTO, with its limited resources, to identify

and prove misconduct and UPL, particularly as tactics and technology to mask the misconduct evolve.

III. Proposed Rule Changes

(1) *Requirement for Representation.* Under this proposed rule, § 2.11 would be amended to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories to be represented by an attorney who is an active member in good standing of the bar of the highest court of any of the 50 states of the U.S., the District of Columbia, and any Commonwealth or territory of the U.S. To ensure clarity regarding who is subject to the requirement, § 2.2 would be amended to define “domicile” and “principal place of business.” The proposed requirement is similar to the requirement that currently exists in many other countries, such as Brazil, Chile, the People’s Republic of China, Israel, Japan, Jordan, Republic of Korea, Morocco, and South Africa, as well as the European Union’s Intellectual Property Office. The majority of countries with a similar requirement condition the requirement on domicile. The USPTO intends to follow this practice. Moreover, requiring a qualified attorney to represent applicants, registrants, and parties whose domicile or principal place of business is not located within the U.S. or its territories is an effective tool for combatting the growing problem of foreign individuals, entities, and applicants failing to comply with U.S. law.

The applicant would be required to obtain U.S. counsel to prosecute the application. When the USPTO receives an application filed by a foreign domiciliary, with a filing basis under section 1 and/or section 44 of the Act, 15 U.S.C. 1051, 1126, that does not comply with the requirements of proposed § 2.11(a), the applicant would be informed in an Office action that appointment of a qualified U.S. attorney is required. The applicant would have

the usual period of six months to respond to an Office action including the requirement, and failure to comply would result in abandonment of the application. *See* 37 CFR 2.63, 2.65(a).

For those applicants the USPTO identifies as being subject to the rule, the USPTO is considering whether to: (1) Defer full examination of the application until the applicant complies with the requirement to appoint U.S. counsel, thereby allowing the appointed attorney to have the opportunity to review the application for compliance with U.S. law during the period to respond to the Office action raising the requirement; or (2) expend additional resources to conduct a complete examination and issue an Office action that includes the requirement along with other applicable refusals and requirements. The USPTO welcomes comments on the two approaches under consideration.

Although applications based on section 66(a) of the Act (Madrid applications), 15 U.S.C. 1141f, would be subject to the requirement to appoint a qualified U.S. attorney, the USPTO is assessing its procedures for a small set of applications (2.9% of all Madrid applications in fiscal year 2017) that are submitted with all formalities and statutory requirements already satisfied, and therefore are in a condition ready for publication upon first action. Madrid applications are initially filed with the International Bureau (IB) of the World Intellectual Property Organization and subsequently transmitted to the USPTO. There is currently no provision for designating a U.S. or any other local attorney in an application submitted to the IB, and the USPTO does not expect that the IB will update its capabilities prior to the anticipated implementation of this proposed rule. Therefore, the USPTO may consider waiving the requirement to appoint a qualified U.S. practitioner prior to publication in this limited situation, until such time as the Madrid system is updated to allow for the designation of a U.S. attorney.

Conforming amendments would also be made to the following sections, which set out the requirements noted: § 2.17(e), for recognition for representation; § 2.22, for filing a TEAS Plus application; and 2.32(a)(4), for a complete application.

(2) *Reciprocal recognition.* Under this proposed rule, § 11.14 would be amended to clarify that only registered and active foreign attorneys or agents who are in good standing before the trademark office of the country in which the attorney or agent resides and practices may be recognized for the limited purpose of representing parties located in such country, provided the trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges. The proposed rule would also require that in any trademark matter where an authorized foreign attorney or agent is representing an applicant, registrant, or party to a proceeding, a qualified U.S. attorney must also be appointed pursuant to § 2.17(b), (c) as the representative with whom the Office will communicate and conduct business.

Currently, only Canadian attorneys and agents are reciprocally recognized under § 11.14(c). The proposed rule removes the authorization for reciprocally recognized Canadian patent agents to practice before the USPTO in trademark matters, but continues to allow reciprocal recognition of Canadian trademark attorneys and agents in trademark matters. Those Canadian patent agents already recognized to practice in U.S. trademark matters would continue to be authorized to practice in pending trademark matters on behalf of Canadian parties only (1) so long as the patent agent remains registered and in good standing in Canada and (2) in connection with an application or post-registration maintenance filing pending before the Office on the effective date of the proposed rule, for which the recognized

patent agent is the representative. Recognized Canadian trademark attorneys and agents would continue to be authorized to represent Canadian parties in U.S. trademark matters.

IV. Cost To Retain U.S. Counsel

The following tables estimate the costs for complying with the proposed rule, using FY17 filing numbers for pro se applicants and registrants with a domicile or principal place of business outside the U.S. or its territories and for Madrid applicants and registrants. The professional rates shown below are the median charges for legal services in connection with filing and prosecuting an application, or filing a post-registration maintenance document, as reported in the 2017 Report on the Economic Survey, published by the American Intellectual Property Law Association.

As noted above, applicants subject to the proposed rule would be required to retain U.S. counsel to prosecute an application and to handle post-registration maintenance requirements and proceedings before the Trademark Trial and Appeal Board. The tables below reflect two sets of aggregate costs—those for applicants who filed pro se in FY17 and would have retained counsel prior to filing and those who would have retained counsel after filing. As discussed above, the information shown below reflects the representation status at the time the USPTO electronic record was searched to obtain the data. Representation status may change over the course of prosecution. The USPTO does not collect information or statistics on applicants who file pro se but subsequently retain counsel during the prosecution of their application. The USPTO recognizes that there may have been a higher number of pro se applicants at filing than is reflected below, but that those applicants had retained counsel prior to the date the search report was generated. Therefore, although it is possible that a higher

number of pro se applicants may incur the cost of having counsel prepare and file an application, those applicants would have already incurred the additional cost for prosecution of the application.

The following table sets out the estimated costs, based on filing basis, if pro se applicants in FY17 with a domicile or principal place of business outside the U.S. or its territories retained counsel prior to filing their applications. A filing basis is the statutory basis for filing an application for registration of a mark in the U.S. An applicant must specify and meet the requirements of one or more bases in a trademark or service mark application. 37 CFR 2.32(a)(5). There are five filing bases: (1) Use of a mark in commerce under section 1(a) of the Act; (2) bona fide intention to use a mark in commerce under section 1(b) of the Act; (3) a claim of priority, based on an earlier-filed foreign application under section 44(d) of the Act; (4) ownership of a registration of the mark in the applicant’s country of origin under section 44(e) of the Act; and (5) extension of protection of an international registration to the United States, under section 66(a) of the Act. 15 U.S.C. 1051(a)–(b), 1126(d)–(e), 1141f(a). The number of applicants shown within each filing-basis category in the tables below reflects the basis status at the time the USPTO electronic record was searched to obtain the representation status.

Although the USPTO believes that applicants who would be subject to the proposed requirement should retain U.S. counsel prior to filing an application, the USPTO recognizes that not all would do so. Therefore, the USPTO expects that the total estimated costs reflected in the table below would be reduced by the number of applicants within each filing-basis category who chose to file an application without retaining U.S. counsel.

FY17 PRO SE APPLICATIONS BY BASIS (EXCLUDING MADRID)—COST IF COUNSEL RETAINED BEFORE FILING *

Activity performed by counsel	Median charge	1(a) ‡ 35,506	1(b) 4,010	1(a)/1(b) 69	44 1,142	44/1(b) 137	Total cost
Filing foreign origin registration application ready for filing.	\$600	N/A	N/A	N/A	\$603,000	N/A	\$603,000
Preparing and filing application	775	\$27,517,150	\$3,107,750	\$53,475	N/A	\$106,175	30,784,550
Prosecution, including amendments and interviews but not appeals.	1,000	35,506,000	4,010,000	69,000	1,142,000	Included in 44 applications.	40,727,000
Statement of use †	400	N/A	1,604,000	27,600	N/A	\$54,800	1,686,400
Total		63,023,150	8,721,750	150,075	1,745,000	\$160,975	73,800,950

* Data as of 12/10/2018. In addition to the number of applications shown for each filing basis, an additional 62 applications did not indicate a basis on the date of filing and currently have no filing basis, either because the application has abandoned or because the applicant has not yet responded to the requirement to indicate a basis.

† If an application is filed under section 1(b) of the Act, the applicant must file a statement of use prior to registration.

‡ The numbers underneath the filing basis indicate the number of applications filed for that basis.

§ The cost shown is for 1,005 section 44 applications, which is the total number of section 44 applications minus the subset that also includes a section 1(b) filing basis.

Alternatively, the table below sets out the estimated costs, based on filing basis, if pro se applicants in FY17 with a domicile or principal place of business outside the U.S. or its territories retained counsel after filing their

applications. As in the situation described above, the USPTO anticipates that a certain number of these applicants would retain U.S. counsel prior to filing an application. Therefore, the USPTO expects that the total

estimated costs reflected in the table below would be increased by the number of applicants within each filing-basis category who chose to do so.

FY17 PRO SE APPLICATIONS BY BASIS (EXCLUDING MADRID)—COST IF COUNSEL RETAINED AFTER FILING *

Activity performed by counsel	Median charge	1(a) 35,506 ‡	1(b) 4,010	1(a)/1(b) 69	44 1,142	44/1(b) § 137	Total cost
Filing foreign origin registration application received ready for filing.	\$600	N/A	N/A	N/A	N/A	N/A	.....
Preparing and filing application	775	N/A	N/A	N/A	N/A	N/A	.....
Prosecution, including amendments and interviews but not appeals.	1,000	\$35,506,000	\$4,010,000	\$69,000	\$1,142,000	Included in prior column.	\$40,727,000
Statement of use †	400	N/A	1,604,000	27,600	N/A	\$54,800	1,686,400
Total		35,506,000	5,614,000	96,600	1,142,000	\$54,800	42,413,400

* Data as of 12/10/2018. In addition to the number of applications shown for each filing basis, an additional 62 applications did not indicate a basis on the date of filing and currently have no filing basis, either because the application has abandoned or because the applicant has not yet responded to the requirement to indicate a basis.

† If an application is filed under section 1(b) of the Act, the applicant must file a statement of use prior to registration.

‡ The numbers underneath the filing basis indicate the number of applications filed for that basis.

§ This column represents the subset of section 44 applications that also includes a section 1(b) filing basis.

As discussed above, Madrid applications are initially filed with the IB and subsequently transmitted to the USPTO. In FY17, the USPTO received 24,418 Madrid applications in which the applicant had an address outside the U.S. or its territories, and thus would be subject to the proposed requirement.

There is currently no provision for designating a U.S. attorney in an application submitted to the IB. Therefore, the USPTO presumes that none of the Madrid applicants subject to the requirement retained U.S. counsel prior to filing. However, USPTO records indicate that at some point after filing,

14,602 of those FY17 Madrid applicants were represented by counsel. Therefore, only the remaining 9,816 Madrid applicants would be subject to the requirement to retain U.S. counsel to prosecute their applications, as shown in the following table:

FY17 MADRID APPLICATIONS—COST IF COUNSEL RETAINED AFTER FILING *

Activity performed by counsel	FY17	Median charge	Total charge
Prosecution, including amendments and interviews but not appeals	9,816	\$1,000	\$9,816,000
Total			\$9,816,000

* Data as of 12/10/2018.

The following table sets out the estimated costs to FY17 pro se registrants who would be subject to

proposed § 2.11(a) when filing a post-registration maintenance document.

FY17 PRO SE POST-REGISTRATION FILINGS—COST IF COUNSEL RETAINED BEFORE FILING *

Activity performed by counsel	FY17	Median charge	Total charge
Section 8 and 15 †	976	\$500	\$488,000
Renewal ‡	405	500	202,500
Section 71 §	522	500	261,000
Madrid Renewal √	134	500	67,000
Total			1,018,500

* Data as of 12/10/2018.

† Under section 8 of the Act, 15 U.S.C. 1058, an affidavit or declaration of continued use is required during the sixth year after the date of registration for registrations issued under section 1 or section 44 of the Act. Section 15 of the Act, 15 U.S.C. 1065, provides a procedure by which the exclusive right to use a registered mark in commerce on or in connection with the goods or services covered by the registration can become "incontestable," if the owner of the registration files an affidavit or declaration stating, among other criteria, that the mark has been in continuous use in commerce for a period of five years after the date of registration.

‡ Section 9 of the Act, 15 U.S.C. 1059, requires that registrations resulting from applications based on section 1 or section 44 be renewed at the end of each successive 10-year period following the date of registration.

§ Under section 71 of the Act, 15 U.S.C. 1141k, an affidavit or declaration of use is required during the sixth year after the date of registration for registered extensions of protection of international registrations to the U.S.

√ The term of an international registration is ten years, and it may be renewed for ten years upon payment of the renewal fee. Articles 6(1) and 7(1) of the Common Regulations Under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to That Agreement.

For applicants, registrants, and parties not subject to the proposed requirement, the USPTO anticipates that implementation of the proposed rule would result in a more accurate and reliable trademark register, which would have the benefit of generally reducing costs to applicants, registrants, and parties and providing greater value to consumers who rely on registered marks. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Because it would result in a more accurate and reliable trademark register, fewer U.S. applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

Discussion of Proposed Regulatory Changes

The USPTO proposes to amend § 2.2 to add § 2.2(o), defining “domicile” and § 2.2(p), defining “principal place of business.”

The USPTO proposes to amend § 2.11 to change the title to “Requirement for representation,” to delete the first sentence, to include the remaining sentence in new § 2.11(a) and to add § 2.11(b)–(e), which set out the requirements regarding representation of applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories.

The USPTO proposes to amend § 2.17(e) to change the word “Canadian” in the title to “Foreign,” to state that recognition of foreign attorneys and agents is governed by § 11.14(c) of this chapter, and to delete current § 2.17(e)(1) and (2).

The USPTO proposes to amend § 2.22 to add § 2.22(a)(21), which would require representation by a U.S. attorney for applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories.

The USPTO proposes to amend § 2.32(a)(4) to indicate that when the applicant is, or must be, represented by a practitioner, the practitioner’s name, postal address, email address, and bar information are required.

The USPTO proposes to redesignate current § 11.14(c) as § 11.14(c)(1) and to clarify the requirements for reciprocal recognition in revised paragraph (c)(1). The USPTO also proposes to add § 11.14(c)(2) to require that in any trademark matter where an authorized foreign attorney or agent is representing an applicant, registrant, or party to a proceeding, a qualified U.S. attorney must also be appointed pursuant to § 2.17(b), (c) as the representative with whom the Office will communicate and conduct business and to amend § 11.14(e) to add the prefatory phrase “Except as specified in § 2.11(a) of this chapter” and the wording “or on behalf of” to the second sentence and to delete the third sentence. The USPTO also proposes to delete the wording “if such firm, partnership, corporation, or association is a party to a trademark proceeding pending before the Office” from § 11.14(e)(3).

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office has

chosen to seek public comment before implementing the rule to benefit from the public’s input.

B. Initial Regulatory Flexibility Analysis: Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA), unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. The USPTO publishes this IRFA to examine the impact on small entities of the Office’s proposed requirement that foreign applicants, registrants, or parties to a proceeding be represented by a qualified U.S. attorney in trademark matters and to seek the public’s views.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 5 below discusses alternatives to this proposal that the Office considered.

1. Description of the reasons that action by the USPTO is being considered:

The USPTO proposes to require applicants, registrants, or parties to a proceeding whose domicile or principal place of business is not located within the U.S. or its territories to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. and who is qualified to represent others before the Office in trademark matters.

The requirement for representation by a qualified U.S. attorney is being proposed in response to the increasing problem of foreign trademark applicants who purportedly are pro se and who are filing what appear to be inaccurate and even fraudulent submissions that violate the Act and/or the USPTO’s rules. In the past few years, the USPTO has seen many instances of UPL where foreign parties who are not authorized to represent trademark applicants are improperly representing foreign applicants before the USPTO. As a result, increasing numbers of foreign applicants are likely receiving inaccurate or no information about the legal requirements for trademark registration in the U.S., such as the standards for use of a mark in commerce, who can properly aver to matters and sign for the mark owner, or even who the true owner of a mark is under U.S. law. This practice raises legitimate concerns that affected

applications and any resulting registrations are potentially invalid, particularly as to averments of use of the mark in U.S. commerce or intention to use the mark, and thus negatively impacts the integrity of the national trademark register.

The proposed requirement is also necessary to enforce compliance by all foreign applicants, registrants, and parties with U.S. statutory and regulatory requirements in trademark matters. Thus, it will not only aid the USPTO in its efforts to improve and preserve the integrity of the U.S. trademark register, but will also ensure that foreign applicants, registrants, and parties are assisted only by authorized practitioners who are subject to the USPTO's disciplinary rules.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule:

The policy objectives of the proposed rule are to: (1) Instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters. As to the legal basis for the proposed rule, Section 41 of the Act, 15 U.S.C. 1123, as well as 35 U.S.C. 2, provide the authority for the Director to make rules and regulations for the conduct of proceedings in the Office.

3. Description of and, where feasible, estimate of the number of affected small entities:

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rule. The proposed rule would apply to any entity filing with USPTO whose domicile or principal place of business is not located within the U.S. or its territories. The USPTO believes that although such entities would incur the costs associated with retaining counsel to prosecute applications and handle maintenance filings for registrations, the overall impact of the proposed rule on such entities would be positive, because it would (1) instill greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance

with statutory and regulatory requirements in trademark matters.

Further, the USPTO anticipates that implementation of the proposed rule would result in a more accurate and reliable trademark register, which would have the benefit of generally reducing costs to applicants, registrants, and parties. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to an averment of use of the mark in U.S. commerce or intention to use the mark. Therefore, fewer U.S. applicants, registrants, and parties should incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

4. Description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The proposed rule imposes no new reporting or recordkeeping requirements.

To comply with the proposed rule, foreign applicants, registrants, or parties would be required to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. (including the District of Columbia and any Commonwealth or territory of the U.S.). The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, registrants, or parties, but does not anticipate that the proposed rule would have a disproportionate impact upon any particular class of small or large entities.

5. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:

The USPTO considered three alternatives before recommending that foreign applicants, registrants, or parties be represented by a qualified U.S. attorney. The USPTO chose the alternative proposed herein because it will enable the Office to achieve its goals effectively and efficiently. Those goals are to (1) instill greater confidence

in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and (2) enable the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

Due to the difficulty in quantifying the intangible benefits associated with the preferred alternative, the Office provides below a discussion of the qualitative benefits to trademark applicants and registrants. One of the primary benefits of the preferred alternative is ensuring the accuracy of the trademark register. The accuracy of the trademark register as a reflection of marks that are actually in use in commerce in the U.S. for the goods/services identified in the registrations listed therein serves a critical purpose for the public and for all registrants. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses, by allowing them to strengthen and safeguard their brands and related investments. Such benefits would be especially valuable for small entities for the following reasons. The public relies on the register to determine whether a chosen mark is available for use or registration. When a person's search of the register discloses a potentially confusingly similar mark, that person may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, initiating proceedings to cancel the registration or oppose the application of the disclosed mark, engaging in civil litigation to resolve a dispute over the mark, or changing business plans to avoid use of the party's chosen mark. In addition, such persons may incur costs and burdens unnecessarily if a registered mark is not actually in use in commerce in the U.S., or is not in use in commerce in connection with all the goods/services identified in the registration. An accurate and reliable trademark register helps avoid such needless costs and burdens. A valid claim of use made as to a registered mark likewise benefits the registrant. Fraudulent or inaccurate claims of use jeopardize the validity of any resulting registration and may subject it to attack and render it vulnerable to cancellation.

The chosen alternative also addresses the increasing problem of foreign trademark applicants who purportedly are pro se and who are filing what appear to be inaccurate and possibly even fraudulent submissions that violate

the Act and/or the USPTO's rules. Requiring foreign applicants, registrants, and parties to retain U.S. counsel in all trademark matters before the USPTO will likely reduce the instances of UPL and misconduct and, when misconduct does occur, it will enable OED to more effectively pursue those who are engaged in the UPL and/or misconduct. The threat of a claim of UPL has not been effective with foreign applicants and the unqualified foreign individuals, attorneys, or firms advising them.

The USPTO has estimated the costs for complying with the proposed rule using FY17 filing numbers for pro se applicants and registrants with a domicile or principal place of business outside the U.S. or its territories, and for Madrid applicants and registrants. As discussed in the preamble, the cost estimates reflect the representation status at the time the USPTO electronic record was searched to obtain the data.

Applicants under section 1 or section 44 of the Act who are subject to the proposed rule would be required to retain U.S. counsel to meet the requirements for a complete application under proposed § 2.32(a)(4). If such applicants did not retain counsel prior to filing an application, the USPTO estimates that the cost for representation would be \$42,413,400. The estimated cost if such applicants had retained counsel prior to filing their applications would be \$73,800,950. Madrid applications, which are based on section 66(a) of the Act, are initially filed with the IB and subsequently transmitted to the USPTO. In FY17, the USPTO received 24,418 Madrid applications in which the applicant had an address outside the U.S. or its territories, and thus would be subject to the proposed requirement. There is currently no provision for designating a U.S. attorney in an application submitted to the IB. Therefore, the USPTO presumes that none of the Madrid applicants subject to the requirement would have retained U.S. counsel prior to filing. However, USPTO records indicate that at some point after filing, 14,602 of those FY17 Madrid applicants were represented by counsel. Therefore, only the remaining 9,816 Madrid applicants would be subject to the requirement to retain U.S. counsel to prosecute their applications. Therefore, the USPTO estimates the cost to all FY17 Madrid applicants to retain counsel after filing their applications as \$9,816,000. The estimated costs to FY17 pro se registrants who registered under section 1, section 44, or section 66(a) and who would be subject to the requirement to retain U.S. counsel when filing a post-registration maintenance document is \$1,018,500.

The costs to comply with the requirement proposed herein would be borne by foreign applicants, registrants, and parties. The proposed requirement would not impact individuals or large or small entities with a domicile or principal place of business within the U.S. Moreover, the proposed requirement would provide qualitative value to all applicants and registrants, as well as to consumers, because it would result in a more accurate and reliable trademark register. Under the proposed rule, submissions would be made by practitioners subject to the disciplinary jurisdiction of OED, making it less likely that they would be signed by an unauthorized party or contain statements that are inaccurate, particularly as to any averment of use of the mark in U.S. commerce or intention to use the mark. Because it would result in a more accurate and reliable trademark register, fewer applicants, registrants, and parties would incur the costs associated with investigating the actual use of a mark to assess any conflict, initiating proceedings to cancel a registration or oppose an application, engaging in civil litigation to resolve a dispute over a mark, or changing business plans to avoid use of a chosen mark.

The second alternative considered would be to take no action at this time. This alternative was rejected because the Office has determined that the requirement is needed to accomplish the stated objectives of instilling greater confidence in the public that U.S. registrations that issue to foreign applicants are not subject to invalidation for reasons such as improper signatures and use claims and enabling the USPTO to more effectively use available mechanisms to enforce foreign applicant compliance with statutory and regulatory requirements in trademark matters.

A third alternative considered was to propose a revision to § 2.22 that would require foreign applicants to retain U.S. counsel in order to obtain a filing date for an application under section 1 and/or section 44 of the Act. This alternative was rejected due to international considerations. Thus, when the USPTO receives an application filed by a foreign domiciliary, with a filing basis under section 1 and/or section 44 of the Act that does not comply with the requirements of proposed § 2.11(a), the USPTO must inform the applicant that appointment of a qualified U.S. attorney is required. Although this places an additional burden on the USPTO, it minimizes the impact of the proposed rule on small entities. Although such entities may choose to incur the cost of

retaining counsel to prepare and file an application, they would not be required to do so.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule:

The proposed rule would not duplicate, overlap, or conflict with any other Federal rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This proposed rule is not subject to the requirements of E.O. 13771 because it is expected to result in no more than *de minimis* costs to citizens and residents of the United States.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not

required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are

necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651-0009, 0651-0050, 0651-0051, 0651-0054, 0651-0055, 0651-0056, and 0651-0061. We estimate that 41,000 applications will have an additional burden of 5 minutes due to this rulemaking, adding in 3,000 burden hours across all trademark collections.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 11

Administrative practice and procedure, Lawyers, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend parts 2 and 11 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123 and 35 U.S.C. 2 unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Amend § 2.2 by adding paragraphs (o) and (p) to read as follows:

§ 2.2 Definitions.

* * * * *

(o) The term domicile as used in this part means the permanent legal place of residence of a natural person.

(p) The term principal place of business as used in this part means the location of a juristic entity's headquarters where the entity's senior executives or officers ordinarily direct and control the entity's activities and is usually the center from where other locations are controlled.

■ 3. Revise § 2.11 to read as follows:

§ 2.11 Requirement for representation.

(a) An applicant, registrant, or party to a proceeding whose domicile or principal place of business is not located within the United States or its territories must be represented by an attorney, as defined in § 11.1 of this chapter, who is qualified to practice under § 11.14 of this chapter. The Office cannot aid in the selection of an attorney.

(b) The Office may require an applicant, registrant, or party to a proceeding to furnish such information or declarations as may be reasonably necessary to the proper determination of whether the applicant, registrant, or party is subject to the requirement in paragraph (a) of this section.

(c) An applicant, registrant, or party to a proceeding may be required to state whether assistance within the scope of § 11.5(b)(2) of this chapter was received in a trademark matter before the Office and, if so, to disclose the name(s) of the person(s) providing such assistance and whether any compensation was given or charged.

(d) Failure to respond to requirements issued pursuant to paragraphs (a) through (c) of this section is governed by § 2.65.

(e) Providing false, fictitious, or fraudulent information in connection with the requirements of paragraphs (a) through (c) of this section shall be deemed submitting a paper for an improper purpose, in violation of § 11.18(b) of this chapter, and subject to the sanctions and actions provided in § 11.18(c).

■ 4. Amend § 2.17 by revising paragraph (e) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(e) Foreign attorneys and agents. Recognition to practice before the Office in trademark matters is governed by § 11.14(c) of this chapter.

* * * * *

■ 5. Amend § 2.22 by:

- a. Removing the word “and” at the end of paragraph (a)(19);
- b. Removing the period at the end of paragraph (a)(20) and adding “; and” in its place; and
- c. Adding paragraph (a)(21).
The addition reads as follows:

§ 2.22 Requirements for a TEAS Plus application.

(a) * * *

(21) An applicant whose domicile or principal place of business is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a).

* * * * *

- 6. Amend § 2.32 by revising paragraph (a)(4) to read as follows:

§ 2.32 Requirements for a complete trademark or service mark application.

(a) * * *

(4) The address of the applicant. When the applicant is, or must be, represented by a practitioner, as defined in § 11.1 of this chapter, who is qualified to practice under § 11.14 of this chapter, the practitioner's name, postal address, email address, and bar information;

* * * * *

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

- 7. The authority citation for 37 CFR part 11 continues to read as follows:

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41; Sec. 1, Pub. L. 113–227, 128 Stat. 2114.

- 8. Amend § 11.14 by revising paragraphs (c) and (e) to read as follows:

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

* * * * *

(c) *Foreigners.* (1) Any foreign attorney or agent not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that he or she is a registered and active member in good standing before the trademark office of the country in which he or she resides and practices and possesses good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: The

trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph (c) shall continue only during the period that the conditions specified in this paragraph (c) obtain.

(2) In any trademark matter where a foreign attorney or agent authorized under paragraph (c)(1) of this section is representing an applicant, registrant, or party to a proceeding, an attorney, as defined in § 11.1 and qualified to practice under paragraph (a) of this section, must also be appointed pursuant to § 2.17(b) and (c) of this chapter as the representative with whom the Office will communicate and conduct business.

* * * * *

(e) *Appearance.* No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark matters on behalf of a client. Except as specified in § 2.11(a) of this chapter, an individual may appear in a trademark or other non-patent matter in his or her own behalf or on behalf of:

- (1) A firm of which he or she is a member;
- (2) A partnership of which he or she is a partner; or
- (3) A corporation or association of which he or she is an officer and which he or she is authorized to represent.

* * * * *

Dated: February 6, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–02154 Filed 2–14–19; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0542; FRL–9989–59–Region 4]

Air Plan Approval; Florida; 2008 8-Hour Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Florida's October 3, 2017, State Implementation Plan (SIP) submission pertaining to the “good neighbor”

provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance of a NAAQS in any other state. In this action, EPA is proposing to determine that Florida's SIP contains adequate provisions to prohibit emissions within the state from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0542 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can also be reached via telephone at (404) 562–9140 and via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per

million (ppm) to 0.075 ppm.¹ See 73 FR 16436 (March 27, 2008). Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or “prongs,” within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the “good neighbor” provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This proposed action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for Florida for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings.²

A. State Submittal

On October 3, 2017, the Florida Department of Environmental Protection (FDEP) provided a SIP submittal³ to EPA to address the interstate transport requirements of sections 110(a)(2)(D)(i)(I) for the Florida SIP.

¹ 0.075 ppm equates to 75 parts per billion (ppb).

² See 78 FR 65559 (November 1, 2013); 79 FR 50554 (August 25, 2014).

³ This submittal supplements an October 31, 2011 submittal addressing other infrastructure SIP elements for Florida for the 2008 Ozone NAAQS. See 78 FR 65559, 79 FR 50554. Although the transmittal letter is dated October 3, 2017, EPA did not receive Florida’s submittal until October 12, 2017.

Florida made this submission to certify that its SIP contains adequate provisions to prohibit emissions activities within the State which will contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state, and therefore, adequately addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS.⁴ Florida’s certification is based on emissions generating activities, air quality monitoring and modeling data, and SIP-approved and state provisions regulating emissions of ozone precursors (volatile organic compounds (VOCs) and nitrogen oxides (NO_x)) within the State.

B. EPA’s Analysis Related to 110(a)(2)(D)(i)(I) for the 2008 8-Hour Ozone NAAQS

EPA developed technical information and related analyses to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 8-hour ozone NAAQS through SIPs and, as appropriate, to provide backstop federal implementation plans (FIPs) in the event that states failed to submit approvable SIPs.⁵ On October 26, 2016 (81 FR 74504), EPA took steps to effectuate this backstop role with respect to eastern states⁶ by finalizing an update to the Cross-State Air Pollution Rule (CSAPR) ozone season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (“CSAPR Update”). The CSAPR Update establishes statewide NO_x budgets for certain affected electricity generating units in 22 eastern states for the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the

⁴ On July 13, 2015, EPA published a final rule that finalized findings of failure to submit with regard to the requirements of CAA section 110(a)(2)(D)(i)(I) for 24 states, including Florida, with respect to the 2008 ozone NAAQS. See 80 FR 39961. The findings of failure to submit established a two-year deadline for EPA to promulgate a FIP to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements. Additional background on the findings of failure to submit—including Florida’s finding—can be found in the preamble to the final rule findings.

⁵ The EPA issued a Notice of Data Availability on August 4, 2015 requesting comment on the modeling platform and air quality modeling results that were used for the proposed CSAPR Update. See 80 FR 46271.

⁶ For purposes of the CSAPR Update, “eastern” states refer to all contiguous states fully east of the Rocky Mountains (thus not including the mountain states of Montana, Wyoming, Colorado, or New Mexico).

2008 8-hour ozone NAAQS. See 81 FR 74506. The rule also determined that emissions from 14 states (including Florida) will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it need not require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

The CSAPR Update used the same framework that EPA used when developing the original 2011 CSAPR, EPA’s interstate transport rule addressing the 1997 8-hour ozone NAAQS as well as the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS. The CSAPR framework establishes the following four-step process to address the requirements of the good neighbor provision: (1) Identify downwind areas, referred to as receptors, that are expected to have problems attaining or maintaining the NAAQS; (2) determine which upwind states impact these identified problems in amounts sufficient to “link” them to the downwind air quality problems; (3) for states linked to downwind air quality problems, identify upwind emissions, if any, that will significantly contribute to nonattainment or interfere with maintenance of a NAAQS; and (4) reduce the identified upwind emissions for states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind by adopting permanent and enforceable measures in a FIP or SIP. In the CSAPR Update, EPA used this four-step framework to determine whether states in the east will significantly contribute to nonattainment or interference with maintenance of downwind air quality. As explained below, the CSAPR Update’s four-step analysis supports the conclusions provided in FDEP’s October 3, 2017, interstate transport SIP for the 2008 8-hour ozone NAAQS that the State will not significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

In the technical analysis supporting the CSAPR Update, EPA used detailed air quality analyses to determine where projected nonattainment or maintenance receptors would be, at step 1 of the four-step framework, and whether emissions from an eastern state contribute to downwind air quality problems at those projected nonattainment or maintenance receptors, at step 2 of the framework. Specifically, EPA determined whether each state’s contributing emissions were

at or above a specific threshold (*i.e.*, one percent of the ozone NAAQS). EPA determined that one percent was an appropriate threshold to use in this analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states at that threshold.⁷ See 81 FR 74504 (October 26, 2016). For the CSAPR Update, EPA applied an air quality screening threshold of 0.75 ppb (one percent of the 2008 8-hour ozone NAAQS of 75 ppb) to identify linkages between upwind states and the downwind nonattainment and maintenance receptors. States with impacts below the one-percent threshold were considered not to contribute to identified downwind nonattainment and maintenance receptors and therefore would not contribute significantly to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state's impact was equal to or exceeded the one-percent threshold, that state was considered "linked" to the downwind nonattainment or maintenance receptor(s) and the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine whether any emissions reductions might be necessary to address the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the final rule for the CSAPR Update, the air quality modeling contained in EPA's technical analysis:

(1) Identified locations in the U.S. where EPA anticipated nonattainment or maintenance issues in 2017 for the

⁷ EPA's analysis showed that the one-percent threshold generally captured a high percentage of the total pollution transport affecting downwind states. EPA's analysis further showed that the application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. See 81 FR 74504 (October 26, 2016) and "Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update" (CSAPR Update Modeling TSD), available at https://www.epa.gov/sites/production/files/2017-05/documents/air_modeling_tsd_final_csapr_update.pdf. This approach is consistent with the use of a one-percent threshold to identify those states "linked" to air quality problems with respect to the 1997 8-hour ozone NAAQS in the original CSAPR rulemaking, wherein EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. See 76 FR 48208 (August 8, 2011). See technical support document for the August 8, 2011 final rule "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP" approvals" located at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0491-4140>.

2008 8-hour ozone NAAQS (these were identified as nonattainment or maintenance receptors, respectively), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. See 81 FR 74504 (October 26, 2016). This modeling used the Comprehensive Air Quality Model with Extensions (CAM_x version 6.11) to model the 2011 base year and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 8-hour ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (the CAM_x Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_x and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States, the District of Columbia, and adjacent portions of Canada and Mexico. The updated modeling data released to support the final CSAPR Update for Florida are the most up-to-date information EPA has developed to inform the Agency's analysis of upwind state linkages to downwind air quality problems for the 2008 8-hour ozone NAAQS. See "Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update" (CSAPR Update Modeling TSD).⁸

EPA's air quality modeling for the final CSAPR Update indicated that Florida's largest impact on any projected downwind nonattainment receptor in 2017 was 0.71 ppb, which is below the one-percent threshold. Accordingly, Florida is not "linked" to any nonattainment receptors in EPA's modeling. Although the modeling for the proposed CSAPR Update did not link Florida's emissions to any maintenance receptors, the updated modeling conducted for the final CSAPR Update indicated that Florida's largest contribution to any projected downwind maintenance-only site in 2017 would be 0.75 ppb.⁹ EPA's modeling indicated an average

⁸ See "Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update" (CSAPR Update Modeling TSD), available at https://www.epa.gov/sites/production/files/2017-05/documents/air_modeling_tsd_final_csapr_update.pdf.

⁹ See CSAPR Update Modeling TSD at Table 4–2, section 4.4 and Appendix D located at available at https://www.epa.gov/sites/production/files/2017-05/documents/air_modeling_tsd_final_csapr_update.pdf.

contribution at the 0.75 ppb threshold to the 2017 design values at two receptors in Houston, Texas (*i.e.*, Harris County sites 482010024 and 482011034).

EPA received a comment on the CSAPR Update proposal¹⁰ stating that the version of CAM_x used for the proposal modeling (CAM_x v6.11) did not include the most recent halogen chemistry that would affect ozone concentrations in saltwater marine atmospheres and transport of ozone from Florida to receptors in Texas. The commenter stated that EPA should include this chemistry in modeling for the final rule. See 81 FR 74504 (October 26, 2016). A report by the CAM_x model developer on the impact of modeling with the latest CAM_x halogen chemistry indicates that the updated chemistry results in lower modeled ozone in air transported over saltwater marine environments for multiple days.¹¹ Specifically, the report notes that on days with multi-day transport across the Gulf of Mexico, modeling with the updated chemistry could lower 8-hour daily maximum ozone concentrations by up to 2 to 4 ppb in locations in eastern Texas, including Houston. Air parcel trajectories for individual days used in EPA's calculation of the contribution from Florida to the Houston receptors confirm that on days with high modeled transport from Florida to the receptors in Houston, air travels for multiple days over the Gulf of Mexico from Florida before reaching the receptors in Houston.¹² In the final rule modeling, EPA was not able to explicitly account for the updated chemistry because this chemistry had not yet been included by the model developer in the source apportionment tool in CAM_x at the time the modeling was performed for this rule. However, because Florida's maximum impact on receptors in Houston, Texas, is exactly

¹⁰ See 80 FR 75706 (December 3, 2015).

¹¹ See Yarwood, G., T. Sakulyanontvittaya, O. Nopmongkol, and B. Koo, 2014. Ozone Depletion by Bromine and Iodine over the Gulf of Mexico Final Report. Prepared for the Texas Commission on Environmental Quality. November 2014. Ramboll Environ International Corporation, Novato, CA and Yarwood, G., J. Jung, O. Nopmongkol, and C. Emery, 2012. Improving CAM_x Performance in Simulating Ozone Transport from the Gulf of Mexico. Prepared for the Texas Commission on Environmental Quality. September 2012. Ramboll Environ International Corporation, Novato, CA. These studies are available in the docket for the CSAPR Update Rule as EPA-HQ-OAR-2015-0500-0458 and EPA-HQ-OAR-2015-0500-0457, respectively.

¹² More details and analysis of the impact of the CAM_x halogen chemistry updates on the contributions from Florida and other Gulf Coast states can be found in section 4.4 and Appendix D to the CSAPR Update Modeling TSD available at https://www.epa.gov/sites/production/files/2017-05/documents/air_modeling_tsd_final_csapr_update.pdf.

at the 0.75 ppb threshold, the Agency concluded that if it had performed the final rule modeling with the updated halogen chemistry, Florida's impact would likely be below this threshold. Therefore, EPA determined in the CSAPR Update that when this updated halogen chemistry is considered, there are no identified linkages between Florida and 2017 downwind projected nonattainment and maintenance receptors. As a result of the modeling, EPA did not finalize a FIP that required NO_x emission reductions from Florida in the CSAPR Update because EPA's analysis performed to support the final rule does not indicate that the State is linked to any identified downwind nonattainment or maintenance receptors with respect to the 2008 8-hour ozone NAAQS. Rather, in the CSAPR Update, EPA took final action to determine that emissions from Florida will not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other states.

Additionally, the CSAPR Update addressed the decision from the United States Court of Appeals for the District of Columbia Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015), remanding for reconsideration certain states' ozone season NO_x emission budgets from the original CSAPR (including Florida's) with respect to the 1997 8-hour ozone NAAQS.¹³ EPA removed Florida from the CSAPR ozone season trading program beginning in 2017.¹⁴

II. What is EPA's analysis of the Florida submittal?

As mentioned in section I of this document, Florida's October 3, 2017 submittal certifies that emission activities from the State will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone

¹³ Among other things, the decision remanded CSAPR without vacatur for reconsideration of the EPA's emission budgets for certain states. The court declared invalid the CSAPR Phase 2 NO_x ozone season emission budgets of 11 states, including Florida, holding that those budgets over-control with respect to the downwind air quality problems to which those states were linked for the 1997 ozone NAAQS. Because the 2008 ozone NAAQS is more stringent than the 1997 ozone NAAQS, the CSAPR Update modeling necessarily indicates that Florida is also not linked to any remaining air quality concerns with respect to the 1997 ozone standard for which the states were regulated in the original CSAPR. For Florida, EPA therefore relieved sources in the State from the obligation to comply with the NO_x ozone season trading program in response to the remand. The court also remanded without vacatur the CSAPR Phase 2 SO₂ annual emission budgets for four states (Alabama, Georgia, South Carolina, and Texas) for reconsideration.

¹⁴ See 81 FR 74523–74524, October 26, 2016.

NAAQS in any other state for the following reasons: (1) Modeling conducted by EPA in support of the CSAPR Update indicates that Florida's impact on any downwind receptor is less than one percent of the standard; (2) NO_x and VOC precursor emissions and monitored ozone concentrations in Florida have decreased since 2000; and (3) Florida has SIP-approved stationary source emissions standards and monitoring and permitting regulations in place addressing certain emissions generating activities that contribute to ozone precursor emissions. Based on an assessment of this information, EPA proposes to approve Florida's SIP submission because it has adequate provisions to ensure that emissions from sources within the State will not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state.

Florida's submittal assessed EPA's CSAPR Update modeling that showed Florida's contribution to downwind receptors for the 2008 8-hour ozone NAAQS is less than one percent of the standard (*i.e.*, 0.75 ppb), except as follows. As discussed in Florida's October 3, 2017 SIP submission, the CSAPR Update 2017 modeling generated an average contribution from Florida at the 0.75 ppb threshold to two receptors in Houston, Texas (*i.e.*, Harris County sites 482010024 and 482011034). However, as discussed in section I.B of this document and the CSAPR Update, a newer version of the CAM_x chemical mechanism contains updated chemical reactions (halogen chemistry) which may have an impact on the estimated ozone contributions from Florida emissions to Houston receptors. In the final rule modeling, EPA was not able to explicitly account for the updated chemistry because this chemistry had not yet been included by the model developer in the source apportionment tool in CAM_x at the time the modeling was performed for this final rule. However, because Florida's maximum contribution to receptors in Houston, Texas is exactly at the 0.75 ppb threshold, the Agency believes that if it had performed the final rule modeling with the updated halogen chemistry, Florida's contribution would likely be below the 0.75 ppb threshold. Therefore, EPA concluded that Florida's emissions will not contribute to downwind nonattainment and maintenance receptors when considering updated halogen chemistry and therefore, did not finalize a FIP that required NO_x emission reductions from Florida in the CSAPR Update.

Accordingly, in the CSAPR Update, EPA already made a final determination that Florida emissions will not significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in other states and that sources in the State are not required to further reduce emissions pursuant to the good neighbor provision with respect to this standard.

Florida's submittal also notes that total NO_x and non-biogenic VOC emissions in Florida have decreased by 52 percent and 44 percent, respectively, since 2000. Florida indicates that monitored ozone concentrations in the State are also trending downward, which correlates to the decline in ozone precursor emissions.¹⁵

Florida also identified SIP-approved regulations in the Florida Administrative Code, including Chapters 62–204, 62–210, and 62–212, that provide for the implementation of a permitting program required under title I, parts C and D of the CAA for sources of NO_x and VOC ozone precursors that contribute to ambient ozone concentrations. The permitting requirements help ensure that no new or modified sources in the State subject to these permitting regulations will contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in other states. Chapters 62–296 and 62–297 establish emission standards and compliance (testing and monitoring) requirements respectively for stationary sources of air pollution emissions.

Based on the information presented herein, EPA proposes to approve Florida's SIP submission on grounds that it addresses the State's 110(a)(2)(D)(i)(I) good neighbor obligation for the 2008 8-hour ozone NAAQS because the EPA has found that the State will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

III. Proposed Action

EPA is proposing to approve Florida's October 3, 2017 SIP submission demonstrating that Florida's SIP is sufficient to address the CAA requirements of prongs 1 and 2 under section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. In the CSAPR Update, EPA has already taken a final action to determine that emissions from Florida will not significantly contribute to nonattainment or interfere with

¹⁵ See Florida's October 3, 2017, SIP submission, Appendix 1 for additional information on ozone precursor emission trends and monitored ozone concentrations in the State.

maintenance of the 2008 8-hour ozone NAAQS in downwind states. EPA requests comment on this proposed approval of Florida's SIP.¹⁶

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: February 5, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019-02542 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0799; FRL-9989-58-Region 4]

Air Plan Approval; Kentucky; Regional Haze Plan and Prong 4 (Visibility) for the 1997 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take the following four actions regarding the Kentucky State Implementation Plan (SIP): Approve Kentucky's November 16, 2018, SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to the Cross-State Air Pollution Rule (CSAPR) for certain regional haze requirements; convert EPA's limited approval/limited disapproval of Kentucky's regional haze plan to a full approval; remove EPA's Federal Implementation Plan (FIP) for Kentucky which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze plan; and approve the visibility prong of Kentucky's

infrastructure SIP submittals for the 1997 Ozone, 2010 Nitrogen Dioxide (NO₂), 2010 Sulfur Dioxide (SO₂), and 2012 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No EPA-R04-OAR-2018-0799 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Michele Notarianni, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached by telephone at (404) 562-9031 or via electronic mail at notarianni.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze Plans and Their Relationship With CAIR and CSAPR

Section 169A(b)(2)(A) of the Clean Air Act (CAA or Act) requires states to submit regional haze plans that contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate Best Available Retrofit Technology (BART) as determined by the state. Under the Regional Haze Rule (RHR), states are directed to conduct BART determinations for such "BART-

¹⁶ EPA is not reopening for comment final determinations made in the CSAPR Update or the modeling conducted to support that rulemaking.

eligible” sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. See 40 CFR 51.308(e)(2). EPA provided states with this flexibility in the RHR, adopted in 1999, and further refined the criteria for assessing whether an alternative program provides for greater reasonable progress in two subsequent rulemakings. See 64 FR 35714 (July 1, 1999); 70 FR 39104 (July 6, 2005); 71 FR 60612 (October 13, 2006).

EPA demonstrated that CAIR would achieve greater reasonable progress than BART in revisions to the regional haze program made in 2005.¹ See 70 FR 39104 (July 6, 2005). In those revisions, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR FIP need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO₂ and nitrogen oxides (NO_x). As a result of EPA’s determination that CAIR was “better-than-BART,” a number of states in the CAIR region, including Kentucky, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO₂ and NO_x in designing their regional haze plans. These states also relied on CAIR as an element of a long-term strategy (LTS) for achieving their reasonable progress goals (RPGs) for their regional haze programs. However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit’s remand, EPA promulgated CSAPR to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states.²

¹ CAIR created regional cap-and-trade programs to reduce SO₂ and NO_x emissions in 27 eastern states (and the District of Columbia), including Kentucky, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone NAAQS or the 1997 PM_{2.5} NAAQS.

² CSAPR requires 28 eastern states to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate transported air pollution unlawfully impacting other states’ ability to attain or maintain four NAAQS: The 1997 ozone NAAQS, the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2008 8-hour ozone NAAQS. The

Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program.

Due to the D.C. Circuit’s 2008 ruling that CAIR was “fatally flawed” and its resulting status as a temporary measure following that ruling, EPA could not fully approve regional haze plans to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted RPGs. On these grounds, on June 7, 2012 (77 FR 33642), EPA promulgated a FIP to replace reliance on CAIR with reliance on CSAPR to address the deficiencies in Kentucky’s regional haze plan.³ EPA had already finalized a limited disapproval of Kentucky’s regional haze plan on March 30, 2012 (77 FR 19098) due to the deficiencies created by the plan’s reliance on CAIR for certain regional haze requirements.⁴ In the same March 30, 2012, action, EPA also finalized a limited approval of the Commonwealth’s regional haze plan as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.

In the June 7, 2012, action, EPA also amended the RHR to provide that participation by a state’s EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant. See 40 CFR 51.308(e)(4). Since EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.⁵

CSAPR emissions limitations are defined in terms of maximum statewide “budgets” for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x by each covered state’s large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years.

³ Throughout this document, references to Kentucky’s (or the Commonwealth’s) “regional haze plan” refer to Kentucky’s original June 25, 2008, regional haze SIP submittal, as later amended in a SIP revision submitted on May 28, 2010.

⁴ On May 11, 2012, EPA published a final rule correcting an inadvertent error in the March 30, 2012, rule regarding the entry for Kentucky’s regional haze plan in the table of non-regulatory provisions at 40 CFR 52.920(e). See 77 FR 27626.

⁵ In 2012, EPA promulgated FIPs relying on CSAPR participation for BART purposes for several states, including Kentucky. See e.g., 77 FR33654. EPA has also approved SIPs from several states relying on CSAPR participation for BART purposes. See, e.g., 82 FR 47393 (October 12, 2017) (Alabama); 82 FR 47930 (October 13, 2017) (Georgia); and 83

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit’s vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court’s ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets included the Phase 2 SO₂ emissions budgets for four states and the Phase 2 ozone-season NO_x budgets for 11 states. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR’s cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule’s Phase 2 budgets that were originally promulgated to begin on January 1, 2014, began on January 1, 2017. EPA has now taken all actions necessary to address the remanded CSAPR budgets.

On September 29, 2017 (82 FR 45481), EPA issued a final rule affirming the continued validity of the Agency’s 2012 determination that participation in CSAPR meets the RHR’s criteria for an alternative to the application of source-specific BART.⁶ In that action, EPA determined that changes to CSAPR’s geographic scope resulting from the actions EPA has taken in response to the D.C. Circuit’s budget remand do not affect the continued validity of participation in CSAPR as a BART alternative.

Kentucky’s November 16, 2018, SIP submittal seeks to correct the deficiencies identified in the March 30, 2012, limited disapproval of its regional haze plan by replacing reliance on CAIR with reliance on CSAPR. EPA is proposing to approve Kentucky’s request that EPA amend the Commonwealth’s regional haze plan by replacing its reliance on CAIR with CSAPR. EPA is proposing to approve

FR 48237 (September 24, 2018) (South Carolina and Tennessee).

⁶ Legal challenges to this rule are pending. *Nat’l Parks Conservation Ass’n v. EPA*, No. 17–1253 (D.C. Cir. filed November 28, 2017).

this SIP submittal and amend the SIP accordingly.

B. Infrastructure SIPs

By statute, plans meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years (or less, if the Administrator so prescribes) after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIP submissions. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126

of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is proposing to approve the prong 4 portions of Kentucky’s infrastructure SIP submissions for the 1997 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, as discussed in section III of this notice. All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

1. 1997 8-Hour Ozone NAAQS

On July 16, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856 (July 18, 1997). States were required to submit infrastructure SIP submissions for the 1997 8-hour ozone NAAQS to EPA no later than July 16, 2000. For the 1997 8-hour ozone NAAQS, EPA is proposing to approve the prong 4 element of the infrastructure SIP submission submitted by Kentucky on December 13, 2007.⁷

2. 2010 1-Hour SO₂ NAAQS

On June 2, 2010, EPA revised the 1-hour primary SO₂ NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO₂ NAAQS to EPA no later than June 2, 2013. For the 2010 1-hour SO₂ NAAQS, EPA is proposing to approve prong 4 of the infrastructure SIP submission submitted by Kentucky on April 26, 2013.⁸

3. 2010 1-Hour NO₂ NAAQS

On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 ppb, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010).

⁷ EPA approved portions of Kentucky’s December 13, 2007, 1997 8-hour ozone infrastructure submission in a separate action. *See* 76 FR 41088 (July 13, 2011).

⁸ EPA approved portions of Kentucky’s April 26, 2013, SO₂ infrastructure submission in a separate action. *See* 81 FR 87817 (December 6, 2016).

States were required to submit infrastructure SIP submissions for the 2010 1-hour NO₂ NAAQS to EPA no later than January 22, 2013. For the 2010 1-hour NO₂ NAAQS, EPA is proposing to approve the prong 4 element of the infrastructure SIP submission submitted by Kentucky on April 26, 2013.⁹

4. 2012 PM_{2.5} NAAQS

On December 14, 2012, EPA revised the annual primary PM_{2.5} NAAQS to 12.0 micrograms per cubic meter (µg/m³). *See* 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 PM_{2.5} NAAQS to EPA no later than December 14, 2015. For the 2012 PM_{2.5} NAAQS, EPA is proposing to approve prong 4 of the infrastructure SIP submission submitted by Kentucky on February 8, 2016.¹⁰

II. What are the prong 4 requirements?

CAA section 110(a)(2)(D)(i)(II) requires a state’s implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state’s efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).¹¹ The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state’s sources that impacts the visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out how a state’s infrastructure SIP submission may satisfy prong 4. One way that a state can meet the requirements is via confirmation in its infrastructure SIP submission that the state has an approved regional haze plan that fully

⁹ EPA approved portions of Kentucky’s April 26, 2013, NO₂ infrastructure submission in separate actions. *See* 81 FR 83152 (November 21, 2016) and 80 FR 14019 (March 18, 2015).

¹⁰ EPA approved portions of Kentucky’s February 8, 2016, PM_{2.5} infrastructure submission in separate actions. *See* 82 FR 37012 (August 8, 2017) and 83 FR 48387 (September 25, 2018).

¹¹ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).” Memorandum from Stephen D. Page, September 13, 2013.

meets the requirements of 40 CFR 51.308 or 40 CFR 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze plan will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze plan, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze RPGs for mandatory Class I areas in other states.

III. What is EPA's analysis of how Kentucky addressed prong 4 and regional haze?

The Commonwealth's December 13, 2007, 1997 8-hour ozone submission; April 26, 2013, 2010 1-hour NO₂ and 2010 1-hour SO₂ submission; and February 8, 2016, 2012 annual PM_{2.5} submission rely on Kentucky's regional haze plan to satisfy its prong 4 requirements. However, EPA has not fully approved Kentucky's regional haze plan as the Agency issued a limited disapproval of the plan on March 30, 2012 (77 FR 19098), due to its reliance on CAIR. Kentucky submitted a SIP revision on November 16, 2018, to replace reliance on CAIR with reliance on CSAPR for certain regional haze provisions.

EPA is proposing to approve the Commonwealth's November 16, 2018, SIP revision replacing reliance on CAIR with CSAPR, and to convert EPA's previous action on Kentucky's regional haze plan from a limited approval/limited disapproval to a full approval because final approval of the SIP revision would correct the deficiencies that led to EPA's limited approval/limited disapproval of the Commonwealth's regional haze plan. Specifically, EPA's approval of Kentucky's November 16, 2018, SIP revision would satisfy the SO₂ and NO_x BART requirements; the Commonwealth's reasonable progress obligations with respect to SO₂ emissions from EGUs formerly subject

to CAIR; and, in part, the requirement that the Commonwealth's LTS contain the measures necessary to achieve reasonable progress. Thus, EPA is also proposing to remove EPA's FIP for Kentucky which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze plan. Because a state may satisfy prong 4 requirements through a fully approved regional haze plan, EPA is therefore also proposing to approve the prong 4 portion of Kentucky's December 13, 2007, 1997 8-hour ozone submission; April 26, 2013, 2010 1-hour NO₂ and 2010 1-hour SO₂ submission; and February 8, 2016, 2012 annual PM_{2.5} submission.

IV. Proposed Action

As described above, EPA is proposing to take the following actions: (1) Approve Kentucky's November 16, 2018, SIP submission to change reliance from CAIR to CSAPR in its regional haze plan; (2) convert EPA's limited approval/limited disapproval of Kentucky's regional haze plan to a full approval; (3) remove EPA's FIP for Kentucky which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze plan; and (4) approve the prong 4 portion of Kentucky's December 13, 2007, 1997 8-hour ozone submission; April 26, 2013, 2010 1-hour NO₂ and 2010 1-hour SO₂ submission; and February 8, 2016, 2012 annual PM_{2.5} submission. All other applicable infrastructure requirements for the infrastructure SIP submissions have been or will be addressed in separate rulemakings.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 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 they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and remove a FIP and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed 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 these actions are either exempted or 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 SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed actions 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 5, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019-02543 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2018-0523; FRL-9989-57-Region 4]

Air Plan Approval and Designation of Areas; FL; Redesignation of the Nassau County 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In a letter dated June 7, 2018, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Nassau County sulfur dioxide (SO₂) nonattainment area (hereinafter referred to as the “Nassau County Area” or “Area”) to attainment for the 2010 1-hour SO₂ primary national ambient air quality standard (NAAQS) and to approve an accompanying state implementation plan (SIP) revision containing a maintenance plan for the Area. The submittal was received by EPA on June 12, 2018. EPA is proposing to determine that the Nassau County Area attained the 2010 1-hour SO₂ NAAQS by its applicable attainment date of October 4, 2018; to approve the SIP revision containing the State’s plan for maintaining attainment of the 2010 1-hour SO₂ standard and to incorporate the maintenance plan into the SIP; and to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2018-0523 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video,

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following three separate but related actions: (1) To determine that the Nassau County Area attained the 2010 SO₂ NAAQS by its applicable attainment date of October 4, 2018; (2) to approve Florida’s maintenance plan for maintaining the 2010 1-hour SO₂ NAAQS in the Area and incorporate it into the SIP; and (3) to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS. The Nassau County Area is comprised of the portion of Nassau County encompassing the circular boundary with the center being Universal Transverse Mercator (UTM) Easting 455530 meters, UTM Northing 3391737 meters, UTM zone 17, using the NAD83 datum (the location of the ambient SO₂ monitor in the Area) and the radius being 2.4 kilometers (km). The only point source of SO₂ emissions within the Nassau County Area is a pulp and paper mill—Rayonier Performance Fibers, LLC Fernandina Beach Sulfite Pulp Mill (Rayonier). An additional pulp and paper mill—WestRock CP, LLC Fernandina Beach Mill (WestRock)—is located immediately adjacent to the Area and is the largest source of SO₂ within 25 km outside of the nonattainment area.

EPA is proposing to determine that the Nassau County Area attained the 2010 SO₂ NAAQS by its applicable attainment date of October 4, 2018. EPA is also proposing to approve Florida’s

SIP revision containing the maintenance plan for the Nassau County Area in accordance with the requirements of section 175A of the Clean Air Act (CAA or Act). The maintenance plan submitted with Florida’s request for redesignation is intended to help keep the Nassau County Area in attainment of the 2010 1-hour SO₂ NAAQS through the year 2032.

EPA is also proposing to determine that the Nassau County Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, EPA is proposing to approve a request to change the legal designation of the portion of Nassau County that is designated nonattainment to attainment for the 2010 1-hour SO₂ NAAQS.

II. Background

On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). See 75 FR 35520 (June 22, 2010). Under EPA’s regulations at 40 CFR part 50, the 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). See 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.¹

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. EPA designated the Area as nonattainment for the 2010 1-hour SO₂ NAAQS, effective on October 4, 2013, using 2009–2011 complete, quality assured, and certified ambient air quality data. See 78 FR 47191 (August 5, 2013). Under the CAA, nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the October 4, 2013, effective date of the designation. See CAA section 192(a). Therefore, the Nassau County

¹ See 40 CFR part 50, appendix T, section 3(b).

Area's applicable attainment date was no later than October 4, 2018.

EPA's 2010 SO₂ nonattainment designation for the Area triggered an obligation for Florida to develop a nonattainment SIP revision addressing certain requirements under title I, part D, subpart 1 (hereinafter "Subpart 1"), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter "Subpart 5"). Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of reasonably available control measures (RACM), requires reasonable further progress (RFP), includes base-year and attainment-year emissions inventories, a SIP-approved nonattainment new source review (NNSR) permitting program that accounts for growth in the area, enforceable emission limitations and other such control measures, and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the October 4, 2013, effective date of designation (*i.e.*, April 4, 2015). *See* CAA section 191(a). Florida submitted a nonattainment SIP revision to EPA on April 3, 2015.

On July 3, 2017 (82 FR 30749), EPA approved Florida's April 3, 2015, SO₂ nonattainment SIP revision. This SIP revision provided a modeled attainment demonstration and satisfied the required nonattainment planning requirements mentioned above for the Nassau County Area. The revision included a base year emissions inventory, a modeling demonstration of attainment for the 2010 SO₂ NAAQS, RACM/Reasonably Available Control Technology (RACT), a RFP plan, NNSR permitting program, and contingency measures for the Nassau County Area. As discussed in Section V, below, the nonattainment SIP revision included permit conditions to reduce SO₂ emissions at the Rayonier and WestRock facilities.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions

in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations, and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992 (57 FR 13498), EPA provided guidance on redesignations in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the "Calcagni Memorandum");

2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

3. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

4. "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," Memorandum from Stephen D. Page, April 23, 2014 (hereinafter referred to as the "SO₂ Nonattainment Area Guidance").

EPA's SO₂ Nonattainment Area Guidance discusses the CAA requirements that air agencies need to address when implementing the 2010 SO₂ NAAQS in areas designated as nonattainment for the standard. The guidance includes recommendations for air agencies to consider as they develop SIPs to satisfy the requirements of sections 110, 172, 175A, 191, and 192 of the CAA to show future attainment and maintenance of the 2010 SO₂ NAAQS. Additionally, the SO₂ nonattainment guidance provides recommendations for air agencies to consider as they develop redesignation requests and maintenance plans to satisfy the requirements of sections 107(d)(3)(E) and 175A.

IV. Why is EPA proposing these actions?

Through a letter dated June 7, 2018, FDEP submitted a request for EPA to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS and submitted an associated

SIP revision containing a maintenance plan. EPA's evaluation indicates that the Nassau County Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result of this evaluation, EPA is proposing to determine that the Area has attained the 2010 1-hour SO₂ NAAQS by its attainment date of October 4, 2018, in accordance with section 179(c)(1) of the CAA based upon air monitoring data for 2015–2017 and air quality dispersion modeling analyses.² EPA is also proposing to approve Florida's maintenance plan for maintaining the 2010 1-hour SO₂ NAAQS in the Area and incorporate it into the SIP and to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS.

V. What is EPA's analysis of the redesignation request and SIP revision?

As stated above, in accordance with the CAA, EPA proposes to: (1) To determine that the Nassau County Area attained the 2010 1-hour SO₂ NAAQS by its attainment date of October 4, 2018; (2) to approve Florida's maintenance plan for maintaining the 2010 1-hour SO₂ NAAQS in the Area and incorporate it into the SIP; and (3) to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS.

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Nassau County Area in the following paragraphs.

Criterion (1)—The Administrator Determines That the Area Has Attained the NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). As discussed in section VIII.A of the SO₂ Nonattainment Area Guidance, there are generally two components needed to support an attainment determination for SO₂, which should be considered interdependently.³ The first component relies on air quality monitoring data. For SO₂, any available monitoring data

² Section 179(c)(1) reads as follows: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date."

³ SO₂ is primarily a localized, source-specific pollutant, and therefore, SO₂ control measures are, by definition, based on what is directly and quantifiably necessary to attain the NAAQS.

would need to indicate that all monitors in the affected area are meeting the standard as stated in 40 CFR 50.17 using data analysis procedures specified in 40 CFR part 50, Appendix T. The second component relies on air quality modeling data. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area, but analyses show that none of the monitors are located in the area of maximum concentration,⁴ then air quality dispersion modeling will generally be needed to estimate SO₂ concentrations in the area. Such dispersion modeling should be conducted to estimate SO₂ concentrations throughout the nonattainment area using actual emissions and meteorological information for the most recent three calendar years. However, EPA may also make determinations of attainment based on the modeling from the attainment demonstration for the applicable SIP for the affected area, eliminating the need for separate actuals-based modeling to support the determination that an area is currently attaining. If the air agency has previously submitted a modeled attainment demonstration using allowable emissions, no further modeling is needed as long as the source characteristics are still reasonably represented.

Florida's pre- and post-modification attainment demonstration modeling

indicates that the Fernandina Beach monitor is not sited in the area of maximum concentration for both the Rayonier and West Rock SO₂ sources, and therefore the clean monitoring data at the Fernandina Beach monitor does not on its own demonstrate that the Area is currently attaining the 1-hour SO₂ NAAQS. EPA's proposed approval of Florida's redesignation and maintenance plan SIP for the Nassau County Area is also based on the modeled attainment demonstration that includes permanent and enforceable SO₂ controls and emissions limits at Rayonier and WestRock showing attainment of the 2010 SO₂ standard by the statutory deadline. EPA approved the attainment demonstration for the Nassau Area on July 3, 2017, and incorporated the new allowable emission rates and control measures into the SIP, making them permanent and enforceable. *See* 82 FR 30749. These permanent and enforceable measures were fully implemented at Rayonier during the second quarter of 2014 and at WestRock in December 2017.

For SO₂, a location may be considered to be attaining the 2010 1-hour SO₂ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and Appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. Specifically, to attain the NAAQS at each monitoring site, the

3-year average of the annual 99th percentile (fourth highest value) of 1-hour daily maximum concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

FDEP currently operates one ambient SO₂ monitor in the Area, the Fernandina Beach SO₂ monitor (AQS ID: 12-089-0005). This monitor is located approximately 0.9 km southeast of Rayonier and 2.5 km south of WestRock. The original nonattainment designation was based on the 2009–2011 design value of 129 ppb at this monitor. As shown in Table 1, the design values at this monitor have decreased since 2011, and the quality-assured, complete, and certified 2015–2017 3-year design value is 43 ppb, well below the 2010 1-hour SO₂ standard of 75 ppb. Since 2011, the annual fourth high value has remained below the standard and there have been no 1-hour values recorded above the standard since late 2014. The significant decrease in SO₂ concentrations is due to the implementation of the permanent and enforceable control measures at Rayonier and WestRock.

TABLE 1—NASSAU COUNTY AREA SO₂ MONITORED DESIGN VALUES [ppb]

Monitoring station (AQS Site ID)	2011–2013 Design value	2012–2014 Design value	2013–2015 Design value	2014–2016 Design value	2015–2017 Design value ⁵
Fernandina Beach (12-089-0005)	70 ppb	57 ppb	58 ppb	51 ppb	43 ppb

Preliminary monitoring data from the Fernandina Beach monitor for 2018 indicates that it continues to not record a violation of the standard.⁶ EPA is proposing to determine that the Nassau County Area has attained the 2010 1-hour SO₂ NAAQS based primarily on the modeling analysis discussed below, which is not contradicted by the quality-assured, complete, and certified ambient air monitoring data for the 2015–2017 period that does not indicate a NAAQS violation. If, before EPA takes final action, monitoring data or other evidence causes EPA to conclude that the Area is not continuing to meet the standard, EPA will not go forward with

the redesignation. As discussed in more detail below, Florida has committed to continue monitoring ambient SO₂ concentrations in this Area in accordance with 40 CFR part 58. Any future changes to the state or local air monitoring station (SLAMS) network in the Area will be submitted to EPA for approval in Florida's annual ambient air monitoring network plan, as required by 40 CFR 58.10.

As discussed in Section VIII.A. of the SO₂ Nonattainment Area Guidance, air quality dispersion modeling will generally be needed to demonstrate attainment in addition to attaining air quality monitoring data (in accordance

with 40 CFR 50.17 and Appendix T of part 50) if the existing monitor is not located in the area of maximum concentration. The SO₂ attainment demonstration submitted by Florida on April 3, 2015, provided an air quality dispersion modeling analysis demonstrating that the control strategies chosen by the State to reduce SO₂ emissions at Rayonier and WestRock would bring the Area into attainment of the standard by the applicable attainment date of October 4, 2018. On July 3, 2017 (82 FR 30749), EPA approved this attainment demonstration along with Florida's control strategies at these facilities. In its June 7, 2018,

⁴ See section VIII.A of the SO₂ Nonattainment Area Guidance.

⁵ The 2017 data is available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

⁶ Preliminary 2018 data is available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

redesignation request and maintenance plan, FDEP included the modeling analysis from its attainment demonstration that demonstrates modeled attainment within the Nassau County Area. Florida's redesignation request states that the control strategies were fully implemented at Rayonier during the second quarter of 2014 and at WestRock in December 2017. Details regarding the control strategies and emissions reductions are provided in the *Criterion (3)* Section of this document. Details regarding the modeling analysis are discussed in the following paragraphs.

FDEP's modeling analysis was developed in accordance with EPA's Guideline on Air Quality Models (Modeling Guideline)⁷ and the SO₂ Nonattainment Area Guidance, and was prepared using EPA's preferred dispersion modeling system, the American Meteorological Society/ Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD (version 14134)⁸ model and multiple data input preprocessors as described below. FDEP used regulatory default options and the rural land use designation in the AERMOD modeling.

The pre-processors AERMET (version 14134) and AERMINUTE were used to process five years (*i.e.*, 2008–2012) of 1-minute meteorological data from the Jacksonville National Weather Service Office (NWS) at the Jacksonville International Airport, Jacksonville, Florida, surface level site, based on FDEP's land use classifications, in combination with twice daily upper-air meteorological information from the same site. The Jacksonville International Airport is located approximately 28 km southeast from the Nassau County Area.

The AERMOD pre-processor AERMAP (version 11103) was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. FDEP used AERSURFACE to generate direction-specific land-use surface characteristics for the modeling.

The stack heights used in the modeling meet the Good Engineering Practice stack height criteria, and the Building Profile Input Program for Plume Rise Model Enhancements preprocessor was used to generate direction-specific building downwash parameters. FDEP developed a Cartesian receptor grid across the nonattainment boundary (approximately 2.4 km around the monitor), with 100-meter spacing in ambient air to ensure maximum concentrations are captured in the analysis.

FDEP selected a background SO₂ concentration based on local SO₂ monitoring data from the Fernandina Beach monitor, located within the nonattainment area, for the period January 2012 to December 2013. This background concentration from the nearby ambient air monitor is used to account for SO₂ impacts from all sources that are not specifically included in the AERMOD modeling analysis. The ambient monitoring data was obtained from the Florida Air Monitoring and Assessment System. Due to its close proximity to the Rayonier facility, monitored concentrations at this station are strongly influenced by emissions from both facilities. As a result, and as allowed by EPA's Modeling Guideline, the data was filtered to remove measurements where the wind direction could transport pollutants from Rayonier and WestRock to the monitor. More specifically, the data was filtered to remove measurements where hourly wind directions were between 263° to 61°.

EPA's SO₂ nonattainment guidance provides a procedure for establishing longer-term averaging times for SO₂ emission limits (up to a 30-day rolling averaging time).⁹ In approving Florida's 2015 attainment demonstration, EPA concluded that FDEP completed this analysis for the Rayonier and WestRock facilities to derive SIP emission limits with a 3-hour longer-term averaging time that are comparatively stringent to the modeled attaining 1-hour level. For more details, see Florida's April 3, 2015,

nonattainment SIP submittal and EPA's final approval. *See* 82 FR 30749 (July 3, 2017).

The results of Florida's attainment modeling are summarized in Table 2. The table presents the results from the four sets of AERMOD modeling runs that were performed. The four modeling runs were the result of using an uncontrolled, or pre-modification, scenario and three different controlled, or post-modification, scenarios. The State used maximum allowable permitted emissions limits for each of the SO₂ emissions units at the Rayonier and WestRock facilities in the modeling demonstration. These emissions limits and other control measures were established in construction permits issued by FDEP. The conditions have been incorporated into the Florida SIP via the approved attainment plan, making them permanent and enforceable, and the Title V operating permits for the Rayonier¹⁰ and WestRock¹¹ facilities. Two of the units at the WestRock facility, emissions unit (EU) 007 and 011 (recovery boilers), have a combined SO₂ emissions limit cap of 300 pounds per hour (lb/hr). Therefore, the State performed three post-control runs to identify the worst-case scenario of emissions distributions. For each of the three modeling runs, all other emissions units at both the Rayonier and WestRock facilities were modeled at their individual permitted allowable SO₂ emissions rates. Under one modeling scenario, the SO₂ emissions cap of 300 pounds per hour (lb/hr) for WestRock EUs 007 and 011 was allotted equally between the recovery boilers. For the two remaining scenarios, the entire 300 lb/hr cap was allotted totally to EU 007 or EU 011, assuming only one recovery boiler was operating at any given time. Table 2 shows that the maximum 1-hour average across all five years of meteorological data (2008–2012) is less than or equal to the 2010 1-hour SO₂ NAAQS of 75 ppb for all three sets of AERMOD modeling runs. For more details, see Florida's April 3, 2015, SIP submittal.

⁷ *See* 40 CFR part 51 Appendix W (EPA's Guideline on Air Quality Models) (January 17, 2017) located at https://www3.epa.gov/ttn/scram/appendix_w/2016/AppendixW_2017.pdf.

⁸ Version 14134 of the AERMOD Modeling System was the current EPA-recommended regulatory version at the time the modeling was performed in 2014–2015, and therefore was appropriate for the modeling analysis.

⁹ FDEP followed the SO₂ Nonattainment Area Guidance on procedures for establishing emissions limits with averaging periods longer than one hour.

¹⁰ *See* air construction permit 0890004–036–AC issued by FDEP on April 12, 2012; 82 FR 30749

(July 3, 2017); and 40 CFR 52.520(d). *See* Title V operating permit 0890004–054–AV issued by FDEP on September 7, 2017.

¹¹ *See* air construction permit 0890003–046–AC issued by FDEP on January 9, 2015; 82 FR 30749 (July 3, 2017); and 40 CFR 52.520(d). *See* Title V operating permit 0890003–055–AV issued by FDEP on November 14, 2017.

¹² The April 3, 2015, final submittal contained typographical errors in its summary modeling table. On April 8, 2016, FDEP provided EPA Region 4 with corrected numbers. FDEP in no way revised the modeling demonstration nor the results inherent in the April 3, 2015, submittal. The

correspondence and clarifying information is provided in the Docket for the attainment demonstration (Docket ID: EPA–R04–OAR–2015–0623).

¹³ The “0” impact from Rayonier indicates that the worst-case scenario was at a time when WestRock was impacting the area of maximum concentration because the wind was coming from the direction of WestRock. Rayonier impacts other receptors in the nonattainment area and may impact this same receptor at other times, as can be seen with the remainder of the modeling demonstration.

TABLE 2—MAXIMUM MODELED SO₂ IMPACTS IN THE NASSAU COUNTY AREA, MICROGRAMS PER CUBIC METER [ppb]¹²

Model scenario	Averaging time	Maximum predicted impact		Background	Total	SO ₂ NAAQS
		Rayonier	WestRock			
Pre-modification ...	1-hour	1 ³ 0.0	2,957.80 (1,128)	4.19 (1.6)	2,961.99 (1,130)	196.4 (75)
Equal Cap Dis- tribution.	1-hour	1,14.45 (43.7)	67.69 (25.8)	10.72 (4.09)	192.87 (73.6)	
Entire Cap—EU 007.	1-hour	110.93 (42.3)	71.56 (27.3)	9.16 (3.5)	191.65 (73.1)	
Entire Cap—EU 011.	1-hour	117.51 (44.8)	63.79 (24.3)	12.82 (4.9)	194.11 (74.0)	

The pre-control analysis resulted in a predicted impact of 1,130 ppb. The post-control analysis resulted in a worst-case predicted impact of 74.0 ppb. EPA has determined that the modeling results indicate sufficient reductions in air quality impact with the implementation of the post-construction control plan for the Rayonier and WestRock facilities. The control measures that have been implemented at the Rayonier and West Rock facilities are outlined in the *Criterion (3)* Section of this document. The modeling results included in Table 2 show that WestRock should be included in the consideration of controls for the following reasons: (1) If both facilities were left uncontrolled, as presented in the first modeled scenario, WestRock would have the greater impact on the area of maximum concentration within the Nassau County Area; and (2) with the worst possible post-control modeling scenario, 35 percent of the total predicted impact on the Nassau County Area would stem from WestRock. Therefore, if no controls were implemented at WestRock, the Area would not likely attain and maintain the 2010 1-hour SO₂ NAAQS. All emissions limits and related compliance parameters have been incorporated into Florida's SIP, making these changes permanent and federally enforceable. More details on the pre-construction and post-construction operations at the facilities are included in Florida's April 3, 2015, nonattainment SIP submission and in EPA's rulemaking on that submittal.¹⁴

On July 3, 2017, EPA approved the modeled attainment demonstration described above and concluded that it is consistent with CAA requirements, EPA's Modeling Guideline, and EPA's guidance for SO₂ attainment demonstration modeling. The modeled controls and emissions limits have been fully implemented as of December 1,

2017. Therefore, EPA proposes to find that the Area has attained the 2010 1-hour SO₂ NAAQS and attained the standard by its applicable attainment date based on this modeling analysis and on quality-assured, complete, and certified 2015–2017 ambient air monitoring data at the Fernandina Beach monitor.

Criterion (2)—The Administrator Fully Approves the Applicable Implementation Plan for the Area Under Section 110(k); and Criterion (5)—Florida Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Florida has met all applicable SIP requirements for the Nassau County Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Florida SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

A. The Nassau County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

1. General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NNSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

¹⁴ See 82 FR 30749 (July 3, 2017) (final rule), 81 FR 57535 (August 23, 2016) (proposed rule), and Florida's SIP submittal located in Docket EPA–R04–OAR–2015–0623.

In addition, EPA believes that other section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rules (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Lorain, Ohio, final rule (61 FR 20458, May 7, 1996); and Tampa, Florida, final rule at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001). Nonetheless, EPA has approved Florida's SIP revisions related to the section 110 requirements for the 2010 SO₂ NAAQS, with the exception of the interstate transport elements at section 110(a)(2)(D)(i)(I). *See* 81 FR 67179 (September 30, 2016).

2. Title I, Part D, Applicable SIP Requirements

Subpart 1 of part D, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the SO₂ NAAQS were designated under Subpart 1 of the CAA in accordance with the deadlines in Subpart 5. For purposes of evaluating this redesignation request, the applicable Subpart 1 SIP requirements are contained in section 172(c)(1)–(9), section 176, and sections 191 and 192. A thorough discussion of the requirements contained in sections 172(c) can be found in the General Preamble for Implementation of Title I. *See* 57 FR 13498 (April 16, 1992).

a. Subpart 1 Section 172 Requirements

Section 172 requires states with nonattainment areas to submit plans providing for timely attainment and meeting a variety of other requirements. As discussed in section V.A, above, EPA's longstanding interpretation of the attainment-related nonattainment

planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not “applicable” for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements “have no meaning” for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memo. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, articulated with regard to the 2010 1-hour SO₂ NAAQS in the SO₂ Nonattainment Area Guidance, which suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACT/RACM, NNSR, and contingency measures under section 172(c)(9).

As discussed above, EPA previously approved Florida's nonattainment SIP for the Nassau County Area. *See* 82 FR 30749 (July 3, 2017). Among other things, the nonattainment SIP for the Area satisfied the section 172(c)(1) requirements for RACT/RACM; 172(c)(2) requirements related to RFP; 172(c)(3) requirements for a comprehensive and accurate emissions inventory; 172(c)(4) and (5) for NNSR; 172(c)(6) requirements for permanent and enforceable control measures necessary to provide attainment of the NAAQS by the attainment date; and section 172(c)(9) requirements for contingency measures.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has a longstanding interpretation that because NNSR is replaced by PSD upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. *See* memorandum from Mary Nichols, Assistant

Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” Florida currently has a fully-approved PSD and part D NNSR program in place in Chapters 62–204, 62–210, and 62–212 of the Florida Administrative Code. Florida's PSD program will become effective in the Area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that Florida's SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Finally, section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by EPA. Florida has not requested the use of equivalent techniques under section 172(c)(8).

As mentioned above, EPA fully approved Florida's April 3, 2015, nonattainment SIP for the Nassau County Area, including the modeled attainment demonstration, and determined that the SIP submission met the applicable nonattainment planning requirements of sections 172 and 191–192 of the CAA demonstrating attainment of the SO₂ standard by the statutory deadline. This approval included the specific SO₂ emission limits and compliance parameters established for the two SO₂ point sources impacting the Nassau Area (Rayonier and WestRock).

b. Subpart 1 Section 176—Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes that it is reasonable to interpret the conformity SIP

requirements¹⁵ as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (upholding this interpretation) (6th Cir. 2001); *See* 60 FR 62748 (December 7, 1995). Furthermore, due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, the EPA's transportation conformity rules provide that they do not apply to SO₂ unless either the EPA Regional Administrator or the director of the state air agency has found that transportation-related emissions of SO₂ as a precursor are a significant contributor to a SO₂ or fine particulate matter (PM_{2.5}) nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment, or maintenance strategy. *See* 40 CFR 93.102(b)(1), (2)(v); SO₂ Nonattainment Area Guidance. Neither of these conditions have been met; therefore, EPA's transportation conformity rules do not apply to SO₂ for the Area. For these reasons, EPA proposes to find that Florida has satisfied all applicable requirements for purposes of redesignation of the Nassau County Area under section 110 and part D of title I of the CAA.

B. The Nassau County Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Florida SIP for the Nassau County Area under section 110(k) of the CAA for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. As mentioned above, EPA fully approved the State's nonattainment SIP and approved

Florida's SIP revisions related to the section 110 requirements for the 2010 SO₂ NAAQS, with the exception of the interstate transport elements at section 110(a)(2)(D)(i)(I). *See* 82 FR 30749 (July 3, 2017) and 81 FR 67179 (September 30, 2016), respectively.

As discussed above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation.

Criterion (3)—The Air Quality Improvement in the Nassau County Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA proposes to determine that Florida has demonstrated that the observed air quality improvement in the Nassau County Area is due to permanent and enforceable reductions in SO₂ emissions resulting from implementation of the SIP, including SO₂ control measures at the Rayonier and WestRock facilities since the nonattainment designation.

When EPA designated the Nassau County Area as a nonattainment area for the 2010 1-hour SO₂ NAAQS, EPA determined that operations at Rayonier were the primary cause of the 2010 1-hour SO₂ NAAQS violations in the Area. *See* 78 FR 47191.¹⁶ However, Florida included the nearby WestRock facility in its modeled attainment demonstration because it determined that WestRock was also a significant contributor to elevated concentrations within the defined nonattainment area.¹⁷ The April 3, 2015, Nassau

County Area nonattainment SIP revision was based on this determination and successfully reduced ambient concentrations below the 1-hour SO₂ NAAQS by only requiring emissions reductions at Rayonier and WestRock.

Rayonier received an air construction permit¹⁸ on April 12, 2012, from FDEP to lower SO₂ maximum allowable emission rates on all three of its SO₂ emitting units—EU 005, EU 006, and EU 022—based on a 3-hour rolling average. The construction permit authorized a stack height increase for the vent gas scrubbing system (EU 005) from 110 feet (ft.) to at least 165 ft. to improve dispersion (the final as-built height is 180 feet) and lowered the allowable SO₂ emission limit to 100 ppm (25.3 lb/hr). The permit also lowered the allowable SO₂ emission limit for the Recovery Boiler (EU 006) to 250 parts per million (volumetric dry (297 lb/hr)) and lowered the allowable SO₂ emission limit for the No. 6 Power Boiler (EU 022) from 420 lb/hr to 180 lb/hr.¹⁹ All three SO₂ units have in-stack continuous emission monitoring systems (CEMS) for SO₂ to ensure compliance with their SO₂ emission limits. FDEP estimated that Rayonier's allowable SO₂ emissions (total from sum of all three controlled units) were reduced from 836.5 lb/hr to 502.3 lb/hr, representing a 40 percent decrease. The construction project was completed in the second quarter of 2014, and the emission limitations for all three controlled units were established in air construction permit (Permit No. 0890004–036–AC) on April 12, 2012, and incorporated into the source's Title V operating permit (Permit No. 0890004–042–AV)²⁰ on May 6, 2014. The limitations became effective the date that the Title V permit revision was issued. EPA incorporated these new SO₂ emissions limits, operating parameters, and compliance monitoring, recordkeeping, and reporting requirements from the air construction permit into the Florida SIP on July 3, 2017, making these controls permanent and enforceable. *See* 82 FR 30749 (July 3, 2017). Table 3 summarizes the changes at the Rayonier facility.

¹⁵ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

¹⁶ *See* Final Technical Support Document, July 2013, Florida First Round of Nonattainment Area Designations for the 2010 SO₂ Primary NAAQS, Prepared by EPA Region 4. This document is

available at Docket ID: EPA–HQ–OAR–2012–0233–0307.

¹⁷ FDEP modeled actual emissions at the time of area designations which revealed contributing impacts throughout the NAA due to emissions from WestRock (formerly RockTenn). *See* 82 FR 30749 (July 3, 2017) and Docket ID: EPA–R04–OAR–2015–0623.

¹⁸ *See* air construction permit 0890004–036–AC issued by FDEP on April 12, 2012, located in the docket for this action.

¹⁹ Rayonier considered two emissions limits for EU 022—180 lb/hr SO₂ at the current stack height of 190 ft; or 250 lb/hr SO₂ if the stack height was increased to 210 ft. However, the stack height for EU 022 No.6 power boiler was not increased, and therefore, the final limit emission limit is 180 lb/hr.

²⁰ *See* Title V operating permit 0890004–042–AV issued by FDEP on May 6, 2014, located in the docket for this action.

TABLE 3—RAYONIER FACILITY SO₂ SOURCE CHANGES

Source	SO ₂ Emission limit *		Stack height	
	Previous	Current	Previous	Current
EU 005—Vent Gas Scrubber	250 ppm (63.2 lb/hr)	100 ppm (25.3 lb/hr)	110 ft	180 ft
EU 006—Recovery Boiler	300 ppm (353.3 lb/hr)	250 ppm (297 lb/hr)	No change	
EU 022—No. 6 Power Boiler	420 lb/hr	180 lb/hr	No change	

* All previous and new SO₂ emission limits are 3-hour rolling averages.

For WestRock, FDEP issued an air construction permit (Permit No. 0890003–046–AC)²¹ on January 9, 2015, authorizing two phases of physical and operational changes to the four largest SO₂ emitting units—No. 5 Power Boiler (EU 006), No. 4 Recovery Boiler (EU 007), No. 5 Recovery Boiler (EU 011), and No. 7 Recovery Boiler (EU 015). WestRock implemented physical upgrades to the No. 4 and No. 5 recovery boilers to achieve a more stable and consistent combustion and chemical recovery process. These physical improvements resulted in an individual permitted allowable emission rate of 150 lb/hr for each recovery boiler or a combined 300.0 lb/hr SO₂ emission cap for both units on a 3-hour block average. These individual and combined emission limits were effective January 1, 2018. For the two power boilers, a pipeline was constructed to reroute low volume, high concentration non-condensable gas (NCGs) to the No. 7 power boiler, and

a white liquor scrubber system was installed upstream of the NCGs to remove total reduced sulfur before combustion. These NCGs were previously collected and burned in the No. 5 power boiler completed in December, but the rerouting and scrubbing of NCGs allowed for a significant reduction in SO₂ emissions from the No. 5 Power Boiler lowering the allowable SO₂ emissions from 550 lb/hr to 15.0 lb/hr based on a 3-hour block average and representing a 97 percent decrease in SO₂ emissions (without any increase in the emission limit of the No. 7 Power Boiler). The 15.0 lb/hr limit was effective beginning

January 31, 2016 (except when the boiler was used as a control device for NCG through November 30, 2017). In addition, effective January 31, 2016, the No. 5 Power boiler ceased burning of No. 6 fuel oil. Effective December 1, 2017, after the rerouting and scrubbing of NCGs was complete, the No. 5 power

boiler was no longer used as a backup NCG control device.

The new emission limits for three of the four controlled units were established in an air construction permit (Permit No. 0890004–046–AC) on January 9, 2015, and incorporated into the source’s Title V operating permit (Permit No. 0890003–055–AV)²² on November 14, 2017. All four SO₂ units have in-stack CEMS for SO₂ to ensure compliance with their SO₂ emission limits in accordance with section 113(a)(1) of the CAA.²³ EPA incorporated these new SO₂ emissions limits for three of the four controlled emission units, operating parameters, and compliance monitoring, recordkeeping and reporting requirements from the air construction permit into the Florida SIP on July 3, 2017, making these controls permanent and enforceable. See 82 FR 30749 (July 3, 2017). Table 4 summarizes each of the source changes at the WestRock facility.

TABLE 4—WESTROCK FACILITY SO₂ SOURCE CHANGES

Source	SO ₂ Emission limit		Other changes
	Previous	Current *	
EU 006—No. 5 Power Boiler	550 lb/hr **	15.0 lb/hr	Removal of NCGs. Improvements made to combustion air system.
EU 007—No. 4 Recovery Boiler***.	None	300.0 lb/hr cap	
EU 011—No. 5 Recovery Boiler***.	None		Improvements made to combustion air system.
EU 015—No. 7 Power Boiler	No Change		Addition of NCG pipeline for backup combustion (white liquor scrubber added upstream).

* All new SO₂ emission limits are 3-hour block averages.

** 24-hour average.

*** SO₂ emissions from each recovery boiler shall not exceed 150.0 lb/hour based on 3-hour block average.

Rayonier’s previous allowable SO₂ limit was 3,663.87 tons per year (tpy), and WestRock’s previous allowable SO₂ limit was 12,286.69 tpy. The new maximum allowable emissions are 2,200.07 and 6,746.08 tpy for Rayonier and WestRock, respectively,

corresponding to a combined reduction of approximately 44 percent in allowable SO₂ emissions. The air quality improvement in the Nassau County Area is due to permanent and enforceable reductions in SO₂ emissions resulting from the control measures

identified above and incorporated into the SIP.

²¹ See air construction permit 0890003–046–AC issued by FDEP on January 9, 2015, located in the docket for this action.

²² See Title V operating permit 0890003–055–AV issued by FDEP on November 14, 2017, located in the docket for this action.

²³ Air construction permit 0890003–046–AC requires that compliance with the combined SO₂ emission cap be demonstrated by certified CEMS data. See Condition 2 in Section 3.C.

Criterion (4)—The Nassau County Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. See CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Nassau County Area to attainment for the 2010 1-hour SO₂ NAAQS, Florida submitted a SIP revision to provide for the maintenance of the 2010 1-hour SO₂ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA is proposing to determine that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a

redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2010 1-hour SO₂ violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. As is discussed more fully below, EPA is proposing to determine that Florida's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Florida SIP.

b. Attainment Emissions Inventory

An attainment inventory identifies a level of emissions in the Area that is sufficient to attain the NAAQS. In its maintenance plan, Florida used 2013 actual emissions data to represent the

attainment emissions inventory. As identified above, the 2011–2013 design value at the Fernandina Beach monitor was below the NAAQS. SO₂ emissions data from Rayonier and WestRock facilities, as included in the 2013 annual operating reports for all sources, is presented in Table 5. Although WestRock is located outside of the Area, Florida included the nearby WestRock facility in its modeled attainment demonstration because it determined that WestRock was also a significant contributor to elevated concentrations within the defined nonattainment area. The complete attainment emissions inventory is presented in Table 6. Florida interpolated area and non-road emissions for the Area for 2013 from the 2011 and 2014 National Emissions Inventory (NEI) data for Nassau County because the State is only required to develop these inventories on a triennial period in accordance with the NEI and subpart A to 40 CFR part 51. The 2013 estimated emissions were then allocated to the Area based on the Area's fraction of land area within the county. The State estimated on-road emissions for the Area with MOVES2014a, and then allocated them to the Area based on the Area's fraction of land area within the county.

TABLE 5—2013 SO₂ EMISSIONS INVENTORY FOR RAYONIER AND WESTROCK FACILITIES

EU ID	Unit description	2013 SO ₂ Emissions (tons)
Rayonier Facility SO₂ Emissions		
005	Vent Gas Scrubber	14.84
006	Recovery Boiler	470.56
022	No. 6 Power Boiler	6.30
Total		491.70
WestRock Facility SO₂ Emissions		
006	No. 5 Power Boiler	60.29
007	No. 4 Recovery Boiler	134.32
011	No. 5 Recovery Boiler	128.91
013	No. 4 Smelt Dissolving Tank	1.45
014	No. 5 Smelt Dissolving Tank	1.37
015	No. 7 Power Boiler	2,793.45
021	No. 4 Lime Kiln	26.70
Total		3,146.49
Total All Point Sources		3,638.19

TABLE 6—2013 ATTAINMENT EMISSIONS INVENTORY FOR THE NASSAU COUNTY AREA

Source type	Point	Area	Non-road	On-road	Total
2013 SO ₂ Emissions (tons)	3,638.19	0.72	0.01	0.11	3,639.03

For additional information regarding the development of the attainment year inventory, please see Appendix D to Florida’s June 7, 2018, SIP submittal.

c. Maintenance Demonstration

Maintenance of the SO₂ standard is demonstrated either by showing that future emissions will not exceed the level of the attainment emissions inventory year or by modeling to show that the future mix of sources and

emission rates will not cause a violation of the NAAQS.

To evaluate maintenance through 2032 and satisfy the 10-year interval required in CAA section 175A, Florida prepared projected emissions inventories for 2020–2032. The emissions inventories are composed of the following general source categories: Point, area, non-road mobile, and on-road mobile. The emissions inventories were developed consistent with EPA guidance and are summarized in Table

7. Florida compared projected emissions for the final year of the maintenance plan (2032) to the attainment emissions inventory year (2013) and compared interim years to the attainment emissions inventory year to demonstrate continued maintenance of the 2010 1-hour SO₂ standard. For additional information regarding the development of the projected inventories, please see Appendix D to Florida’s June 7, 2018, SIP submittal.

TABLE 7—PROJECTED FUTURE EMISSIONS INVENTORIES FOR THE AREA

Source type	Projected 2020 SO ₂ emissions (tons)	Projected 2023 SO ₂ emissions (tons)	Projected 2026 SO ₂ emissions (tons)	Projected 2029 SO ₂ emissions (tons)	Projected 2032 SO ₂ emissions (tons)
Point	3,638.19	3,638.19	3,638.19	3,638.19	3,638.19
Area	0.93	0.98	1.03	1.08	1.12
Non-road	0.01	0.01	0.01	0.01	0.01
On-road	0.05	0.05	0.05	0.04	0.04
Total	3,639.18	3,639.23	3,639.28	3,639.32	3,639.37

In situations where local emissions are the primary contributor to nonattainment, such as the Nassau County Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standards should not be exceeded in the future. Florida has projected emissions as described previously, and these projections indicate that emissions in the Nassau County Area will remain at nearly the same levels as those in the attainment year inventory for the duration of the maintenance plan. While these projections include a very small increase in area source emissions from 2020 to 2032 (0.19 tons), the increase is negligible when compared to the total emissions inventory and EPA does not believe that this projected increase should cause an exceedance of the SO₂ NAAQS through 2032. This belief is supported by the fact and any increases in actual emissions from Rayonier or WestRock must remain below their permitted levels, which were made permanent and enforceable through incorporation into the SIP. Furthermore, any potential future SO₂ emissions sources that may locate in or near the Area would be required to comply with the FDEP’s approved NSR permitting programs to ensure that the Area will continue to meet the NAAQS.

As discussed in the SO₂ Nonattainment Area Guidance, an approved attainment plan that relies on air quality dispersion modeling using maximum allowable emissions, such as

Florida’s attainment plan for the Area, can generally be expected to demonstrate that the standard will be maintained for the requisite 10 years and beyond without regard to any changes in operation rate of the pertinent sources that do not involve increases in maximum allowable emissions.²⁴ EPA believes that the Area will continue to maintain the standard at least through the year 2032 because the air quality modeling in the approved attainment plan showed that the Area would attain the standard based on maximum allowable emissions limits at Rayonier and WestRock that are incorporated into the SIP, these sources have fully implemented the permanent and enforceable modeled limits and controls, and the emissions reductions from these measures are reflected in the attaining design values for the Area.

d. Monitoring Network

The Fernandina Beach monitor (12–089–0005) is the only SO₂ monitor located within the Nassau County Area, and the 2010 1-hour SO₂ nonattainment designation was based on data collected from 2009–2011 at this monitor. In its maintenance plan, Florida has committed to continue operating an appropriate SO₂ monitoring network, consult with EPA prior to making any changes to the existing network, and continue to quality assure the monitoring data in accordance with 40 CFR part 58. Therefore, Florida has addressed the requirement for

monitoring. FDEP’s monitoring network plan was submitted on June 30, 2017, and approved by EPA on October 19, 2017.

e. Verification of Continued Attainment

The State of Florida, through FDEP, has the legal authority to enforce and implement all measures necessary to attain and maintain the NAAQS. Section 403.061(35), Florida Statutes, authorizes the Department to “exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act.” This includes implementing and enforcing all measures necessary to attain and maintain the NAAQS. In addition, FDEP will use emissions data submitted by Rayonier and WestRock through annual operating reports to verify continued compliance with the permitted emissions rates that were shown through the modeling demonstration in the attainment plan to be sufficient to provide for maintenance of the 2010 1-hour SO₂ NAAQS throughout the Area. Any increases in actual emissions from Rayonier or WestRock must remain below their permitted levels, which were made permanent and enforceable through incorporation into the SIP. Furthermore, any potential future SO₂ emissions sources that may locate in or near the Area would be required to comply with the FDEP’s approved NSR permitting programs to ensure that the Area will continue to meet the NAAQS. In addition to assuring continued attainment in this manner, FDEP will

²⁴ See SO₂ Nonattainment Area Guidance at p.67.

verify continued attainment through operation of the monitoring network.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. In cases where attainment revolves around compliance of a single source or a small set of sources with emissions limits shown to provide for attainment, the EPA interprets "contingency measures" to mean that the state agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreement pending the adoption of revised SIPs.²⁵ A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the maintenance plan contains triggers to determine when contingency measures are needed and what kind of measures should be used. Upon notification by the FDEP Office of Air Monitoring that the Fernandina Beach monitor has registered SO₂ levels in excess of the standard for a fourth time during a calendar year, FDEP will notify Rayonier and WestRock of the occurrence of the fourth high exceedance. Upon notification by FDEP of a confirmed fourth high exceedance,²⁶ Rayonier and WestRock will, without any further action by FDEP or EPA, undertake a full system audit of all emissions units subject to control under the attainment plan. Within 10 days of notification of the confirmed fourth high exceedance, each source will independently submit a written system audit report to FDEP summarizing all operating parameters of

all emissions units for four 10-day periods up to and including the dates of the exceedances together with recommended provisional SO₂ emission control strategies for each affected unit and evidence that these control strategies have been deployed, as appropriate. Upon receipt of the above-mentioned reports, FDEP will then begin a 30-day evaluation of these reports to determine the cause of the exceedances, followed by a 30-day consultation period with the sources to develop and implement appropriate operational changes. At the end of the consultation period, FDEP will mandate operational changes identified by the written system audit to prevent any future violation of the NAAQS. Any necessary changes would be implemented as soon as practicable, with at least one implemented within 18–24 months of the monitored violation, in order to bring the Area into attainment as expeditiously as possible. These changes could include, but would not be limited to:

- Fuel switching to reduce or eliminate the use of sulfur-containing fuels;
- Combustion air system enhancement;
- Vent gas scrubber enhancement;
- White liquor scrubber enhancement; and/or
- Physical or operational reduction of production capacity, as appropriate.

If a permit modification is necessary, the State would issue a final permit in accordance to Sections 120 and 403 of the Florida Statutes. Subsequently, Florida would submit any relevant permit change to EPA as a source-specific SIP revision to make the change permanent and enforceable. In addition to including these contingency measures in the maintenance plan, Florida also stated that all existing control measures will remain in effect after redesignation.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory; maintenance demonstration; monitoring; verification of continued attainment; and a contingency plan. Therefore, EPA proposes to determine that the maintenance plan for the Area meets the requirements of section 175A of the CAA and proposes to incorporate the maintenance plan into the Florida SIP.

VI. What is the effect of EPA's proposed actions?

Approval of Florida's redesignation request would change the legal designation of the portion of Nassau

County that is within the Nassau County Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. Approval of Florida's associated SIP revision would also incorporate a plan for maintaining the 2010 1-hour SO₂ NAAQS in the Nassau County Area through 2032 into the SIP.

VII. Proposed Actions

EPA is proposing to take three separate but related actions regarding the redesignation request and associated SIP revision for the Nassau County Area.

First, EPA is proposing to determine that the Area attained the 2010 1-hour SO₂ NAAQS by its attainment date of October 4, 2018. This determination is being proposed in accordance with section 179(c)(1) of the CAA.

Second, EPA is proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2010 1-hour SO₂ NAAQS through 2032.

Third, EPA is proposing to approve Florida's request for redesignation of the Area from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. If finalized, approval of the redesignation request for the Nassau County Area would change the official designation of the portion of Nassau County, Florida, encompassing the circular boundary with the center being UTM Easting 455530 meters, UTM Northing 3391737 meters, UTM zone 17, using the NAD83 datum (the location of the ambient monitor in the Area) and the radius being 2.4 kilometers, as found at 40 CFR part 81, from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

²⁵ See SO₂ Nonattainment Area Guidance at p.69.

²⁶ Confirmation of a fourth high exceedance over the SO₂ NAAQS would be made after quality assurance activities are completed, but not necessarily with FDEP-certified data.

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed 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 redesignations and SIP approvals are exempted under Executive Order 12866;

- Do not impose information collection burdens 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 mandates 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Sulfur dioxide.

40 CFR Part 81

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

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

Dated: February 5, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019-02536 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2018-0035; FRL-9989-31-Region 5]

Revision of Sheboygan County, Wisconsin Nonattainment Designation for the 1997 and 2008 Ozone Standards and Clean Data Determination for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from Wisconsin to revise the designation for the Sheboygan nonattainment area for the 1997 primary and secondary ozone National Ambient Air Quality Standards (NAAQS) and the 2008 primary and secondary ozone NAAQS, by splitting the existing area into two distinct nonattainment areas that together cover the identical geographic area of the existing nonattainment area. This revised designation is supported by air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries. Both areas would retain their nonattainment designation and Moderate classification. In this action, EPA is also proposing to make a clean data determination for one of the two separate areas for the 2008 ozone NAAQS.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0035 at <http://www.regulations.gov>, or via email to

aburano.douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever we, "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Wisconsin's Submittal and Supporting Information
- III. Proposed Actions
- IV. Statutory and Executive Order Reviews

I. Background

Following promulgation of a new or revised NAAQS, EPA is required by section 107(d)(1) of the Clean Air Act (CAA) to designate areas throughout the United States as attainment, nonattainment, or unclassifiable for the NAAQS.

On July 18, 1997, EPA revised the former 1-hour ozone primary and secondary standards and replaced them with 8-hour standards at a level of 0.08 parts per million (ppm) (40 CFR 50.10). On April 30, 2004, EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 1997 ozone NAAQS, based on air

quality data from 2001–2003 showing a design value of 0.100 ppm at the Sheboygan Kohler Andrae monitor in eastern Sheboygan County (69 FR 23858). EPA's designation was consistent with Wisconsin's recommendation to designate the entirety of Sheboygan County as nonattainment, based on 2000–2002 data showing a violation of the 1997 ozone NAAQS at this monitor. At the time of its designation, the Sheboygan, WI nonattainment area for the 1997 ozone NAAQS was classified as Moderate with an attainment date of June 15, 2010. On March 1, 2011, EPA made a determination that the Sheboygan nonattainment area had attained the 1997 ozone NAAQS, based on monitoring data for the 2006–2008 and 2007–2009 periods (76 FR 11080). Since that determination, the area has continued to attain the standard, and the area retains its nonattainment designation and Moderate classification.

On March 27, 2008, EPA further revised the 8-hour ozone NAAQS by lowering the level of the primary and secondary standards from 0.08 ppm to 0.075 ppm, often expressed as 75 parts per billion (ppb) (40 CFR 50.15). On May 21, 2012, EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 2008 ozone NAAQS, based on air quality data from 2008–2010 showing a design value of 78 ppb at the Sheboygan Kohler Andrae monitor (77 FR 30088). EPA's designation was a modification of Wisconsin's recommendation to designate the entire state as attainment, based on 2006–2008 data, despite these data showing a violation of the 2008 ozone NAAQS at this monitor. At the time of its designation, the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS was classified as Marginal with an attainment date of July 20, 2015. On May 4, 2016, EPA determined that the area qualified for a one-year attainment date extension to July 20, 2016 (81 FR 26697). On December 19, 2016, using information from the Sheboygan Kohler Andrae monitor, EPA determined that the area had failed to attain the standard by its extended attainment date, and EPA reclassified the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS as Moderate with an attainment date of July 20, 2018 (81 FR 91841). On November 14, 2018, EPA proposed to grant Wisconsin's request for a one-year attainment date extension to the Moderate attainment date for the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS to July 20, 2019 (83 FR 56781).

The eastern boundary of Sheboygan County follows the shoreline of Lake Michigan. Due to its proximity to the lake, Sheboygan County is impacted by lake breeze meteorology. This is the offshore flow of ozone precursors from nearby and upwind locations over the lake and the subsequent onshore flow of ozone from over Lake Michigan back onto land locations due to temperature differences between the lake surface and the onshore surface. As described in greater detail in the Technical Support Document (TSD) contained in the docket for this rulemaking, ozone violations in eastern Sheboygan County are heavily influenced by lake breeze meteorology.

II. Wisconsin's Submittal and Supporting Information

On June 27, 2013, the Wisconsin Department of Natural Resources (WDNR) submitted a request for EPA to reconsider the boundary of the Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS, and reduce the area to a smaller size. Wisconsin requested that EPA reduce the area to a narrower strip of land along the eastern side of the county following the Lake Michigan shoreline. For regulatory purposes, Wisconsin recommended this boundary be composed of ten municipalities, with a varying width of roughly 3 to 9 miles. Wisconsin supported its request with a technical demonstration that estimated how ozone design values might decrease as a function of increasing distance from Lake Michigan.

In 2014, WDNR began operating a second ozone monitor in Sheboygan County at the Sheboygan Haven location, located northwest of the first monitor at the Sheboygan Kohler Andrae location. The Sheboygan Kohler Andrae and Sheboygan Haven monitors are both Federal Reference Method (FRM) monitors. The data from these two monitors show different ozone levels, with the Sheboygan Haven monitor consistently showing lower ozone concentrations than the Sheboygan Kohler Andrae monitor. After the 2016 monitoring period was complete and the data were certified in 2017, EPA gained the ability to consider the first full design value from the Sheboygan Haven monitor for the three-year period of 2014–2016.

On October 26, 2015, EPA published a final rule revising the ozone standards to a level of 0.070 ppm (80 FR 65292). Under CAA section 107(d), following promulgation of a new NAAQS, states are required to submit area designation recommendations to EPA. On September 21, 2016, Wisconsin

recommended that the entire state be designated as attainment for the 2015 ozone NAAQS, and on April 20, 2017, Wisconsin submitted additional technical information to support that request.¹ Although this proposed action addresses only the 1997 ozone NAAQS and 2008 ozone NAAQS, EPA is using the more recent technical information contained in Wisconsin's April 20, 2017, submittal to supplement Wisconsin's June 27, 2013, request to reconsider the boundary of the Sheboygan nonattainment area. The April 20, 2017, submittal contains Wisconsin's analysis of the origins, transport, and distribution of ozone impacting Wisconsin's Lake Michigan shoreline. It includes ozone monitoring data, a conceptual model for ozone formation, and an analysis of the spatial extent of ozone concentrations exceeding the NAAQS. This submittal can be found in the docket for this rulemaking.

III. Proposed Actions

In this rulemaking, EPA is proposing to take two related actions. First, under the authority of CAA section 107(d)(3)(D), EPA is proposing to split the original Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area. Second, pursuant to regulations at 40 CFR 51.1118, EPA is proposing to make a clean data determination for one of the proposed separate areas for the 2008 ozone NAAQS.

A. Split of the Sheboygan Nonattainment Area

In determining whether to approve or deny a state's request for a revision to the designation of an area under section 107(d)(3)(D), EPA believes it is appropriate to consider the same factors Congress directed EPA to consider when EPA initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." EPA incorporated similar factors into its March 28, 2000, memorandum entitled "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality

¹ On June 4, 2018, EPA designated a portion of Sheboygan County as the Sheboygan County, WI nonattainment area for the 2015 ozone NAAQS, and EPA designated the remaining portion of Sheboygan County as attainment/unclassifiable for the 2015 ozone NAAQS (83 FR 25776).

Standards” and its December 4, 2008, memorandum entitled “Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards”. These memoranda provide a framework for states and tribes to base their nonattainment area boundary recommendations for the 1997 ozone NAAQS and 2008 ozone NAAQS, respectively, and EPA believes the factors identified in these memoranda are relevant and appropriate to consider when evaluating proposed revisions to those boundaries under section 107(d)(3). The memoranda recommend that states evaluate the following factors to support nonattainment area boundary recommendations and final boundary determinations: Air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.²

Based on a consideration of the information submitted by Wisconsin and other available information discussed in the TSD, EPA believes that the air quality data, emissions and emissions-related data, meteorology, geography/topography, jurisdictional boundaries, and other air quality related considerations, as well as planning and control considerations, support the state’s request to reconsider the Sheboygan nonattainment area boundary.

Wisconsin’s June 27, 2013, submittal requested that EPA reduce the size of the Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS. To this end, EPA proposes to split the existing area into two separate nonattainment areas to acknowledge the differences in the factors contributing to ozone levels in the separate areas, and to provide Wisconsin with additional flexibility in meeting the CAA’s nonattainment area planning and emissions control requirements. This flexibility would include the ability to account for differences in air quality in the separate areas such that one of the separate areas would attain the ozone standards faster than the other.

If EPA finalizes this action as proposed, the current Sheboygan nonattainment area for the 1997 ozone NAAQS and the 2008 ozone NAAQS would be split into two distinct nonattainment areas that together cover the identical geographic area of the current area. One of the proposed separate areas, to be called the

“Shoreline Sheboygan County, WI” nonattainment area, would consist of the eastern portion of the original area, including the Sheboygan Kohler Andrae monitor. The other proposed separate area, to be called the “Inland Sheboygan County, WI” nonattainment area, would consist of the western portion of the original area, including the Sheboygan Haven monitor. The areas would be split along the following roadways, going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road. EPA’s proposed nonattainment boundary for the Shoreline Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County inclusive and east of the split boundary.³ EPA’s proposed nonattainment boundary for the Inland Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County exclusive and west of the split boundary.⁴ Both areas would continue to be designated nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS and classified as Moderate.

CAA section 107(d)(1)(A)(i) defines “nonattainment” as “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet)” the NAAQS. Therefore, consistent with the statute and EPA’s March 28, 2000, and December 4, 2008, memoranda, EPA will not redraw the boundaries of nonattainment areas where one portion of the area, though monitoring clean data, contributes to the nonattainment of another portion of the area. This action proposes that the available information demonstrates that the proposed Inland Sheboygan area does not contribute to a violation of the 2008 ozone NAAQS in the proposed Shoreline Sheboygan area, and thus it is appropriate that the two areas be considered separate for implementation and planning purposes. A detailed analysis supporting this demonstration can be found in the TSD contained in

³ The proposed Shoreline Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS covers the identical geographic area as the Sheboygan County, WI nonattainment area for the 2015 ozone NAAQS (40 CFR 81.350).

⁴ The proposed Inland Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS covers the identical geographic area as the portion of Sheboygan County that was designated as attainment/unclassifiable for the 2015 ozone NAAQS (40 CFR 81.350).

the docket for this rulemaking. Because this action also proposes to find that the proposed Inland Sheboygan area is attaining the 2008 ozone NAAQS, it is not necessary to consider whether the proposed Shoreline Sheboygan area contributes to a violation of the 2008 ozone NAAQS in the proposed Inland Sheboygan area, as no such violation exists. Because the 2008 ozone NAAQS retains the same general form and averaging time as the 1997 ozone NAAQS, but is set at a more protective level, EPA’s analysis for the 2008 ozone NAAQS suffices as a demonstration for an identical nonattainment area boundary revision for the less stringent 1997 ozone NAAQS.

B. Clean Data Determination for the Inland Sheboygan Area for the 2008 Ozone NAAQS

An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2008 ozone NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA’s Air Quality System (AQS). Ambient air quality monitoring data for the three-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,⁵ on average, for the three-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the three-year period. See section 2.3 of appendix P to 40 CFR part 50.

In accordance with 40 CFR 51.1118, EPA proposes to determine that the proposed Inland Sheboygan area is attaining the 2008 ozone NAAQS. This determination is based upon three years of complete, quality-assured and certified data for the 2015–2017 monitoring period. The Sheboygan Haven monitor with site ID 55–117–0009 is the only FRM ozone monitor within the proposed separate Inland

⁵ The ozone season is defined by state in 40 CFR 58 appendix D. Before 2016, the ozone season for Wisconsin was April 15 through October 15. Beginning in 2016, the ozone season for Wisconsin is March 1 through October 15. See 80 FR 65292, 65466–67 (October 26, 2015).

² The guidance for the 1997 ozone NAAQS identified 11 factors, and the guidance for the 2008 ozone NAAQS identified nine factors. In analyses for the final ozone designations for the 2008 ozone NAAQS, the emissions-related factors were grouped together resulting in five overall factors, and EPA is retaining that grouping in this rulemaking.

Sheboygan area; the annual fourth-highest 8-hour ozone concentrations

and the three-year average of these concentrations (monitoring site ozone

design values) for this monitoring site are summarized in Table 1.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND THREE-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE PROPOSED INLAND SHEBOYGAN AREA

County, state	AQS site ID	Site name	2015 4th high (ppm)	2016 4th high (ppm)	2017 4th high (ppm)	2015–2017 average (ppm)
Sheboygan, WI	55–117–0009	Sheboygan Haven	0.067	0.074	0.070	0.070

The three-year ozone design value for 2015–2017 is 0.070 ppm, which meets the 2008 ozone NAAQS. Data for 2018 is not yet complete, quality-assured, or certified, but these data show that the proposed separate Inland Sheboygan area continues to meet the 2008 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the proposed separate Inland Sheboygan area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the proposed separate Inland Sheboygan area is attaining the 2008 ozone NAAQS if the design value of a monitoring site in the area exceeds the 2008 ozone NAAQS after proposal but prior to final approval of the clean data determination. EPA will not finalize this clean data determination unless and until EPA takes final action to split the Sheboygan nonattainment area into two separate areas, as proposed.

Should this action be finalized, the requirements for WDNR to submit attainment demonstrations, and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and any other planning requirements related to attainment of the 2008 ozone NAAQS for the proposed Inland Sheboygan area, would be suspended for as long as the area continues to attain the 2008 ozone NAAQS. This action does not constitute a redesignation of the area to attainment of the 2008 ozone NAAQS under section 107(d)(3)(E) of the CAA, nor does it constitute approval of a maintenance plan for the area as required under section 175A of the CAA, nor does it find that the area has met all other requirements for redesignation. The proposed Inland Sheboygan area will remain designated nonattainment for the 2008 ozone NAAQS until such time as EPA determines that the area meets CAA requirements for redesignation to attainment and takes a separate action to redesignate the area.

IV. Statutory and Executive Order Reviews

This rulemaking action proposes to revise the boundary of an existing nonattainment area by splitting it into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area, and proposes to make a determination of attainment of the 2008 ozone NAAQS based on air quality data for one of those areas. These actions do not impose additional requirements.

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

This proposed action is not a “significant regulatory action” subject to review by the Office of Management and Budget.

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

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

D. Regulatory Flexibility Act (RFA)

This action is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibilities Act (5 U.S.C. 601 *et seq.*)

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have a substantial direct effect on one or more Indian tribes, since areas of Indian country are not being designated as part of this action. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 52

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

Dated: December 21, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

[FR Doc. 2019-02350 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2016-0496; FRL-9989-28-Region 5]

Air Plan Disapproval; Wisconsin; Redesignation Request for the Wisconsin Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove an August 15, 2016, request from Wisconsin to redesignate the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) ozone nonattainment area (Chicago nonattainment area) to attainment of the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) because the area is violating the standard with 2015–2017 monitoring data. EPA is also proposing to disapprove Wisconsin’s maintenance plans and Motor Vehicle Emissions Budgets (MVEBs), submitted with the State’s redesignation request, since approval of these State Implementation

Plan (SIP) components is contingent on attainment of the ozone standard. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County in Illinois; Lake and Porter Counties in Indiana; and the area east of and including the corridor of Interstate 94 in Kenosha County, Wisconsin.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0496 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kathleen D’Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What actions is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation to attainment?

IV. What is EPA’s analysis of the State’s request?

V. Statutory and Executive Order Reviews

I. What actions is EPA proposing?

EPA is proposing to disapprove Wisconsin’s August 15, 2016, request to redesignate the Wisconsin portion of the Chicago nonattainment area to attainment for the 2008 ozone standard because the Chicago nonattainment area continues to violate this standard based on the most recent three years (2015–2017) of quality-assured, certified air quality monitoring data. Because this area continues to violate the 2008 ozone NAAQS, we are also proposing to disapprove the ozone maintenance plans and MVEBs included in the State’s submittal.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under EPA’s regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.15 and appendix P to 40 CFR part 50.

Ground-level ozone is generally not emitted directly by sources. Rather, emitted oxides of nitrogen (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight, particularly under warm conditions, to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_x and VOC are “ozone precursors.” Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO_x emissions.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the Clean Air Act (CAA) requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. The Chicago nonattainment area was designated as a Marginal nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. See 77 FR 34221 (June 11, 2012).

On May 4, 2016 (81 FR 26697), in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), EPA determined that the Chicago nonattainment area failed to attain the

2008 ozone NAAQS by the July 20, 2015, Marginal area nonattainment deadline, and reclassified the area from Marginal to Moderate nonattainment. EPA's determination was based upon three years of complete, quality-assured and certified data for the 2012–2014 time period.

III. What are the criteria for redesignation to attainment?

Section 107(d)(3)(E) of the CAA allows redesignation of a nonattainment area to attainment of the NAAQS provided that: (1) The Administrator [of EPA] determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of the State's request?

EPA is proposing to disapprove Wisconsin's request to redesignate the Wisconsin portion of the Chicago nonattainment area because the nonattainment area continues to violate the 2008 ozone standard based on quality-assured, certified ozone monitoring data for 2015–2017. Preliminary monitoring data for 2018

also indicate that the area continues to violate the 2008 ozone standard. The Chicago nonattainment area fails to meet the critical air quality requirement of section 107(d)(3)(E)(1) of the CAA. The basis for EPA's proposed disapproval of the redesignation request is discussed in more detail below.

A. Has the Chicago area attained the 2008 ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area may be considered to attain the 2008 ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on the most recent three consecutive years of complete, quality-assured air quality data for all monitoring sites in the area. To attain this standard, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). The 2015–2017 ozone monitoring data considered here meet these certification criteria.

As part of the State's August 15, 2016, redesignation request, Wisconsin considered monitoring data for 2013–2015, which showed attainment of the 2008 ozone standard. However, since submittal of the State's redesignation request, quality-assured and certified ozone data have become available for the 2014–2016 and 2015–2017 time periods. These data may not be ignored in the review of Wisconsin's redesignation request.

The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site in the Chicago area are summarized in Table 1.

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Table 1. Annual 4th High Daily Maximum 8-Hour Ozone Concentrations and 3-Year Average of the 4th High Daily Maximum 8-Hour Ozone Concentrations for the Chicago Area

County, State	AQS Site ID	2013 4 th highest daily max value	2014 4 th highest daily max value	2015 4 th highest daily max value	2016 4 th highest daily max value	2017 4 th highest daily max value	2013-2015 design value	2014-2016 design value	2015-2017 design value
Cook, IL	17-031-0001	0.064	0.066	0.066	0.075	0.078	0.065	0.069	0.073
	17-031-0032	0.071	0.067	0.066	0.077	0.074	0.068	0.070	0.072
	17-031-0076	0.062	0.067	0.065	0.075	0.078	0.064	0.069	0.072
	17-031-1003	0.066	0.065	0.068	0.075	0.060	0.066	0.069	0.067
	17-031-1601	0.064	0.070	0.066	0.073	0.070	0.066	0.069	0.069
	17-031-3103	0.062	0.063	0.058	0.067	0.061	0.061	0.062	0.062
	17-031-4002	0.063	0.063	0.061	0.076	0.068	0.062	0.066	0.068
	17-031-4007	0.067	0.069	0.068	0.076	0.071	0.068	0.071	0.071
	17-031-4201	0.069	0.068	0.068	0.079	0.070	0.068	0.071	0.072
	17-031-7002	0.069	0.072	0.070	0.076	0.073	0.070	0.072	0.073
DuPage, IL	17-043-6001	0.063	0.064	0.067	0.074	0.069	0.064	0.068	0.07
Kane, IL	17-089-0005	0.064	0.066	0.065	0.074	0.069	0.065	0.068	0.069
Lake, IL	17-097-1007	0.072	0.073	0.070	0.077	0.074	0.071	0.073	0.073
McHenry, IL	17-111-0001	0.065	0.067	0.064	0.073	0.070	0.065	0.068	0.069
Will, IL	17-197-1011	0.061	0.064	0.064	0.064	0.068	0.063	0.064	0.065
Lake, IN	18-089-0022	0.064	0.067	0.064	0.070	0.070	0.065	0.067	0.068
	18-089-0030	0.062	0.065	0.070	N/A	N/A	0.065	N/A	N/A
	18-089-2008	0.069	0.067	0.060	0.068	0.069	0.068	0.065	0.065
Porter, IN	18-127-0024	0.069	0.071	0.066	0.070	0.072	0.068	0.069	0.069
	18-127-0026	0.063	0.067	0.060	0.071	0.077	0.063	0.066	0.069
Kenosha, WI	55-059-0019	0.075	0.076	0.075	0.080	0.079	0.075	0.077	0.078

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The most recent 3-year ozone design value, for 2015–2017, is 0.078 ppm,¹ which violates the 2008 ozone NAAQS. This design value demonstrates that the Chicago nonattainment area has not attained the 2008 ozone standard. In addition, preliminary monitoring data for 2018 indicate that the Chicago nonattainment area will continue to violate the standard when that data is considered. Therefore, Wisconsin’s ozone redesignation request fails to meet the first, and most important, criterion for the approval of a redesignation request: Attainment of the 2008 ozone standard throughout the entire nonattainment area. For this reason, we propose to disapprove the

State’s request for redesignation to attainment.

B. Has Wisconsin submitted an approvable ozone maintenance plan and approvable motor vehicle emissions budgets?

To be approvable, an ozone maintenance plan, in part, must demonstrate that the ozone standard will be maintained in the ozone nonattainment area for at least 10 years after EPA approves the state’s ozone redesignation request. A critical component of ozone maintenance plans is an ozone attainment emissions inventory documenting the VOC and NO_x emissions inventory for the period in which the area has attained the ozone standard. The ozone maintenance demonstration usually involves the

demonstration that future (during the 10 years after redesignation) VOC and NO_x emissions will be at or below the level of emissions that lead to attainment of the standard. Wisconsin’s ozone redesignation request purports to contain such an ozone maintenance demonstration; however, because the Chicago area continues to violate the 2008 ozone standard, we cannot conclude that Wisconsin has developed an acceptable attainment year emissions inventory. Absent a demonstration that the maintenance plan inventory is sufficient to maintain attainment of the standard, EPA may not approve the ozone maintenance demonstration portion of the ozone maintenance plan submitted by the State.

Since the estimation of the VOC and NO_x MVEBs depends on the

¹ The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

determination of mobile source emissions that, along with other emissions in the nonattainment area, provide for attainment of the ozone standard, and since the Chicago nonattainment area continues to violate the 2008 ozone standard, we find that Wisconsin's VOC and NO_x MVEBs are also not acceptable.

EPA is proposing to disapprove Wisconsin's maintenance plan and MVEBs for these reasons.

IV. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Similarly, disapproval of a redesignation request only affects the legal designation of an area under the CAA and does not create any new requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state requirement and redesignation request.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for

EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: December 20, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

[FR Doc. 2019-02352 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215 and 217

[Docket DARS-2019-0004]

RIN 0750-AJ72

Defense Federal Acquisition Regulation Supplement: Undefined Contract Actions (DFARS Case 2018-D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 and a section of the National Defense Authorization Act for Fiscal Year 2018 to revise requirements for definitizing undefinitized contract actions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 16, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D008, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for "DFARS Case 2018-D008." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D008" on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2018–D008 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and section 815 of the NDAA for FY 2018 (Pub. L. 115–91). Section 811 modifies restrictions on undefinitized contractual actions (UCA) regarding risk based profit, time for definitization, and foreign military sales. Section 815 establishes limitations on unilateral definitizations of UCAs over \$50 million.

II. Discussion and Analysis

This rule proposes to make the following amendments to DFARS:

- If a UCA is definitized after the end of the 180-day period beginning on the date the contractor submits a qualifying proposal, the head of the agency shall ensure profit reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

- The definitization of a UCA may not be extended by more than 90 days beyond the maximum 180-day definitization schedule negotiated in the UCA without a written determination by the Secretary of the military department concerned, the head of the defense agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment, that it is in the best interests of the military department, the defense agency, the combatant command, or the Department of Defense, respectively, to continue the action.

- Contracting officers of the Department of Defense may not enter

into a UCA for a foreign military sale unless the contract action provides for definitization within 180 days and the contracting officer obtains approval from the head of the contracting activity. The head of the agency may waive this requirement if necessary to support a contingency or humanitarian or peacekeeping operation.

- Contracting officers may not unilaterally definitize a UCA with a value greater than \$50 million until—
 - The end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or the date on which the amount of funds expended under the contractual action is equal to more than 50 percent of the negotiated overall not-to-exceed price for the contractual action;

- The service acquisition executive for the military department that awarded the contract or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a defense agency or other component of the Department of Defense, approves the definitization in writing;

- The contracting officer provides a copy of the written approval to the contractor; and

- A period of 30 calendar days has elapsed after the written approval is provided to the contractor.

- The definition of “qualifying proposal” is being amended to align with the statutory definition at 10 U.S.C. 2306, which is a proposal that contains sufficient information to enable DoD to conduct a “meaningful audit” instead of a “complete and meaningful audit.”

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and Contracts for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Orders 13771

This rule is not expected to be an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify requirements on undefinitized contractual actions (UCAs) regarding calculations of risk-based profit objectives, timing for definitizations, foreign military sales, and limitations on unilateral definitizations of UCAs over \$50 million, in accordance with recently enacted statutory requirements.

The objective is to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and section 815 of the NDAA for FY 2018 (Pub. L. 115–91).

With regard to potential profit impacts, DoD estimates that this rule will impact approximately 470 contracts per year, primarily awarded to other than small entities, where definitization is extended beyond 180 days after receipt of a qualifying proposal.

The proposed rule does not include additional reporting or record keeping requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the requirements.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D008), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 215 and 217

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215 and 217 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 215 and 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. In section 215.404–71–3, revise paragraph (d)(2)(i) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

- (d) * * *
- (2) * * *

(i) The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (also see 217.7404–6(a) and 243.204–70–6). When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type. However, if a contractor submits a qualifying proposal to definitize an undefinitized contract action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal (as defined in 217.7401(c)), the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

217.7401 [Amended]

■ 3. In section 217.7401, amend paragraph (c) introductory text by removing “complete and”.

217.7402 [Amended]

- 4. Amend section 217.7402 by—
 - a. Removing paragraph (a)(1);
 - b. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3); and
 - c. In the newly redesignated paragraphs (a)(1) and (2), remove the semicolons and replace them with periods.
- 5. Revise section 217.7404 to read as follows:

217.7404 Limitations.

See PGI 217.7404 for additional guidance on obtaining approval to authorize use of an undefinitized contact action, documentation requirements, and other limitations on their use.

(a) *Foreign military sales contracts.* (1) A contracting officer may not enter into a UCA for a foreign military sale unless—

(i) The contract action provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal; and

(ii) The contracting officer obtains approval from the head of the contracting activity to enter into a UCA in accordance with 217.7404–1.

(2) The head of an agency may waive the requirements of paragraph (a)(1) of this section, if a waiver is necessary in order to support any of the following operations:

- (i) A contingency operation.
- (ii) A humanitarian or peacekeeping operation.

(b) *Unilateral definitization by a contracting officer.* Any UCA with a value greater than \$50 million may not be unilaterally definitized until—

(1) The earlier of—

- (i) The end of the 180-day period, beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or
- (ii) The date on which the amount of funds expended under the contractual action is equal to more than 50 percent of the negotiated overall not-to-exceed price for the contractual action;

(2) The service acquisition executive for the military department that

awarded the contract or the Under Secretary of Defense for Acquisition and Sustainment if the contract was awarded by a defense agency or other component of the Department of Defense, approves the definitization in writing;

(3) The contracting officer provides a copy of the written approval to the contractor; and

(4) A period of 30 calendar days has elapsed after the written approval is provided to the contractor.

■ 6. Amend section 217.7404–3 by revising paragraph (a)(1) to read as follows:

217.7404–3 Definitization schedule.

(a) * * *

(1) The date that is 180 days after the contractor submits a qualifying proposal. This date may not be extended beyond an additional 90 days without a written determination by the Secretary of the military department concerned, the head of the defense agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment that it is in the best interests of the military department, the defense agency, the combatant command, or the Department of Defense, respectively, to continue the action; or

* * * * *

217.7404–5 [Amended]

■ 7. Amend section 217.7404–5, in paragraph (b) introductory text, by removing “217.7404–2” and adding “217.7404(a), 217.7404–2” in its place.

■ 8. Amend section 217.7404–6 by revising paragraph (a) to read as follows:

217.7404–6 Allowable profit.

* * * * *

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price. However, if a contractor submits a qualifying proposal to definitize a UCA and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal;

* * * * *

Notices

Federal Register

Vol. 84, No. 32

Friday, February 15, 2019

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 12, 2019.

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 March 18, 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 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: National Animal Health Monitoring System; Goat 2019 Study.
OMB Control Number: 0579-0354.
Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, poultry, and aquaculture disease risk factors. APHIS plans to conduct the Goat 2019 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population.

Need and Use of the Information: The purpose of the study is to collect information through questionnaires and biologic sampling which will be analyzed and organized into descriptive reports. Several information sheets will be derived from these reports and disseminated by APHIS to producers, stakeholders, academia, veterinarians, and other interested parties. The collected data will be used to: (1) Establish national and regional production measures for producer, veterinary, and industry references; (2) predict or detect national and regional trends in disease emergence and movement; (3) address emerging issues; (4) examine the economic impact of health management practices; (5) provide estimates of both outcome (disease or other parameters) and exposure (risks and components) variables that can be used in analytic studies in the future by APHIS; (6) provide input into the design of surveillance system for specific diseases; and (7) provide parameters for animal disease spread models.

Description of Respondents: Businesses or Other For-Profit Entities.
Number of Respondents: 4,770.
Frequency of Responses: Reporting; On occasion.
Total Burden Hours: 8,947.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019-02457 Filed 2-14-19; 8:45 am]

BILLING CODE 3410-34-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Wednesday, February 20, 2019, the purpose of meeting is for the committee to begin planning for a community forum in Northern Nevada focused on the impact of policing practices on individuals with mental health concerns and veterans.

DATES: The meeting will be held on Wednesday, February 20, 2019, at 1:00 p.m. PT. Public Call Information: *Dial:* 877-260-1479. *Conference ID:* 7933190.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at afortes@usccr.gov or (213) 894-3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877-260-1479, conference ID number: 7933190. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the

conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894-0508, or emailed Ana Victoria Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (213) 894-3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Approval of Minutes for November 7, 2018 Meeting
- III. Vote for Vice Chair
- IV. Debrief Discussion
- V. Planning Discussion for Community Form in April (Northern Nevada)
- VI. Public Comment
- VII. Next Steps

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 11, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-02366 Filed 2-14-19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia 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 Georgia Advisory Committee (Committee) will hold a meeting via teleconference on Monday March 4, 2019, at 3:00 p.m. EST for the purpose of reviewing testimony regarding Civil Rights and The Olmstead Act (Disability Rights). The Committee will also discuss next steps in their study of this topic.

DATES: The meeting will be held on Monday March 4, 2019, at 3:00 p.m. EST.

Public Call Information: Dial: 1-877-260-1479, Conference ID: 5685918

FOR FURTHER INFORMATION CONTACT: Melissa Wojnarowski, DFO, at 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. 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 under the Commission on Civil Rights, Georgia 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
Civil Rights in Georgia: The Olmstead Act (Disability Rights)
Public Comment
Adjournment

Dated: February 11, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-02365 Filed 2-14-19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Minnesota Advisory Committee (Committee) to the Commission will be held at 3 p.m. CST Thursday March 14, 2019 to discuss civil rights concerns in the State.

DATES: The meeting will be held on Thursday March 14, 2019, at 3 p.m. CST.

Public Call Information: Dial: 1-877-260-1479; Conference ID: 6007917.

For More Information Contact: Carolyn Allen at callen@usccr.gov or (312) 353-8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-

8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the U.S. Commission on Civil Rights, Regional Programs Unit, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353-8324, or emailed Carolyn Allen at callen@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting on the Federal Advisory Committee database (facadatabase.gov), under the Minnesota Advisory Committee link. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Approval of Minutes
- III. Discussion: Racial Trauma and Civil Rights
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: February 11, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-02362 Filed 2-14-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-041]

Truck and Bus Tires From the People's Republic of China: Amended Final Determination and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2018, the Court of International Trade (CIT)

remanded the International Trade Commission's (ITC) negative injury determination on truck and bus tires from the People's Republic of China (China). On January 30, 2019, the ITC filed its remand determination, finding material injury to an industry in the United States by reason of imports of truck and bus tires from China. Based on affirmative final determinations by the Department of Commerce (Commerce) and the ITC, Commerce is issuing a countervailing duty order on truck and bus tires from the China. In addition, Commerce is amending its final determination to correct ministerial errors. Therefore, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and collect cash deposits on entries of truck and bus tires from China at the *ad valorem* rates listed below.

DATES: Applicable February 15, 2019.

FOR FURTHER INFORMATION CONTACT:

Dana Mermelstein or Lana Nigro, 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) 482-1391 or (202) 482-1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2017, the ITC published its final determination that an industry in the United States was not materially injured or threatened with material injury by reason of imports of truck and bus tires from China.¹ The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the petitioner) challenged the ITC's final negative determination, and on November 1, 2018, the CIT remanded the determination to the ITC for reconsideration.² On January 30, 2019, upon remand, the ITC found that a U.S. industry is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of truck and bus tires from China.³ Further, the ITC determined that critical circumstances do not exist with respect

¹ See *Truck and Bus Tires from China*, 82 FR 14232 (March 17, 2017) (ITC Final Determination).

² See *United Steel, Paper and Forestry, Rubber, Mfg., Energy, Allied Indus. and Serv. Workers Int'l Union v. United States*, Slip Op. 18-151 (CIT November 1, 2018).

³ See ITC Notification Letter to the Secretary of Commerce, referencing ITC Investigation Nos. 701-TA-556 and 731-TA-1311, dated February 8, 2019 (ITC Notification).

to imports of truck and bus tires from China.

On February 8, 2019, pursuant to the U.S. Court of Appeals for the Federal Circuit's (CAFC) opinion in *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374, 1381 (Fed. Cir. 2010), the ITC notified Commerce of its determination upon remand.⁴ In *Diamond Sawblades*, the CAFC clarified that the same procedures for issuance of an order and collection of cash deposits apply when a material injury determination is made upon remand, and that the ITC should provide notice to Commerce of its remand determination at the time that it is issued, notwithstanding the pendency of ongoing litigation.⁵ Moreover, the Court held that Commerce's duty to publish an order is triggered by the ITC's notification of its affirmative injury determination, rather than the date of the publication of the notice of such determination.⁶

Scope of the Order

The products covered by this order are truck and bus tires from China. For a complete description of the scope of this order, see the Appendix to this notice.

Amendment to the Final Determination

On January 30, 2017, and February 1, 2017, Shanghai Huayi Group Corporation Limited (Double Coin) and Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd. (collectively GTC), respectively, timely alleged that the *Final Determination*⁷ contained certain ministerial errors and requested that Commerce correct such errors.

Commerce reviewed the record and on February 14, 2017, agreed that certain errors referenced in Double Coin's and GTC's allegations constitute ministerial errors within the meaning of section 705(e) of the Act and 19 CFR 351.224(f).⁸ Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to reflect the correction of the ministerial errors described in the *Ministerial Error Memorandum*.⁹ Based on our correction of the ministerial errors in Double

⁴ *Id.*

⁵ *Diamond Sawblades*, 626 F.3d at 1381-82.

⁶ *Id.* at 1379, n.2.

⁷ See *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2019) (Final Determination).

⁸ See Memorandum, "Countervailing Duty Investigation of Truck and Bus Tires from the People's Republic of China: Allegations of Ministerial Errors," dated February 14, 2017 (Ministerial Error Memorandum).

Coin's calculation, the subsidy rate for Double Coin decreased from 38.61 *ad valorem* to 20.98 *ad valorem*.¹⁰ Based on our correction of the ministerial errors in GTC's calculation, the subsidy rate for GTC decreased from 65.46 *ad valorem* to 63.34 percent *ad valorem*.¹¹ Because in the *Final Determination*, we based the "all-others" rate on Double

Coin's and GTC's *ad valorem* subsidy rates, the corrections described above also required that we recalculate the "all-others" rate. This recalculation decreased the "all-others" rate determined in the *Final Determination* from 52.04 percent *ad valorem* to 42.16 percent *ad valorem*.¹²

⁹ This amended final determination recalculated the subsidy rates for certain LTAR programs that are used in the concurrent antidumping duty investigation for the calculation of domestic pass-through subsidy rate. These amended subsidy rates are as follows:

Inputs provided at LTAR	Double coin	GTC
Carbon Black	Same as Final	3.73%.
Nylon Cord	Same as Final	4.05%.
Natural Rubber	0.02%	Same as Final.
Synthetic Rubber and Butadiene	2.35%	6.49%.

Countervailing Duty Order

On February 8, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its remand determination in this investigation, in which it found that imports of truck and bus tires are materially injuring a U.S. industry.¹³ Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise from China, effective the date of publication of this countervailing duty order in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable

subsidy rates for the subject merchandise. On or after the date of publication of this countervailing duty order in the **Federal Register**, we will instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The "all-others" rate applies to all producers or exporters not specifically listed, as appropriate.

Company	Subsidy rate (percent)
Guizhou Tyre Import and Export Co., Ltd; Guizhou Tyre Co., Ltd.	63.34
Shanghai Huayi Group Corporation Limited; Double Coin Holdings Ltd.; Double Coin Group (Jiangsu) Tyre Co., Ltd.; Double Coin Group (Chongqing) Tyre Co., Ltd.; Double Coin Group Shanghai Donghai Tyre Co. Ltd.; Double Coin Group (Xinjiang) Kunlun Tyre Co., Ltd.	20.98
All-Others	42.16

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to truck and bus tires from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at <http://enforcement.trade.gov/stats/iastatsl.html>.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: February 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of the order covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires

covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

- TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and
- HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a "TR" or "HC" suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the "Truck-Bus" section of the *Tire and Rim Association Year Book*, as updated annually,

unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, e.g., a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) The designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See ITC Notification.

molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.¹⁴

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2019-02657 Filed 2-14-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-040]

Truck and Bus Tires From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2018 the U.S. Court of International Trade (CIT) remanded the International Trade Commission's (ITC) final negative injury determination on truck and bus tires from the People's Republic of China (China). On January 30, 2019, the ITC filed its final remand determination, finding material injury to an industry in the United States by reason of imports of truck and bus tires from China. Based on affirmative final determinations by the Department of Commerce (Commerce) and the ITC, Commerce is issuing an antidumping duty order on truck and bus tires from China. Therefore, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and collect cash deposits on entries of truck and bus tires

¹⁴ On August 26, 2016, Commerce included HTSUS subheadings 4011.69.0020, 4011.69.0090, and 8716.90.5059 to the case reference files, pursuant to requests by CBP and the petitioner. See Memorandum to the File entitled, "Requests from Customs and Border Protection and the Petitioner to Update the ACE Case Reference File," dated August 26, 2016. On January 19, 2017, Commerce included HTSUS subheadings 4011.70.00 and 4011.90.80 to the case reference files, pursuant to requests by CBP. See Memorandum to the File entitled, "Requests from Customs and Border Protection to Update the ACE Case Reference File," dated January 19, 2017.

from China at the *ad valorem* rates listed below.

DATES: Applicable February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Andre Gziryan, 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) 482-2201, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(c), on January 27, 2017, Commerce published affirmative final determinations of sales at less than fair value and critical circumstances in the investigation of truck and bus tires from China.¹ On March 13, 2017, the ITC notified Commerce of its final determination that an industry in the United States is not materially injured or threatened with material injury within the meaning of section 735(b)(1)(A) of the Act by reason of imports of truck and bus tires from China at less than fair value.²

Accordingly, Commerce instructed CBP to liquidate entries of subject merchandise without regard to antidumping duties.³ On November 1, 2018, the CIT remanded the ITC's final negative determination.⁴ On January 30, 2019, upon remand, the ITC issued its final determination, in which the ITC found that an industry in the United States is materially injured by reason of imports of truck and bus tires from China. However, in its final determination upon remand, the ITC found that critical circumstances do not exist with respect to imports of subject merchandise from China that are subject to Commerce's final affirmative critical circumstances finding.

On February 8, 2019, pursuant to the U.S. Court of Appeals for the Federal

¹ See *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Final Determinations*).

² See Letter from the ITC to Commerce, dated March 13, 2017. See also *Truck and Bus Tires from China*, 82 FR 14232 (March 17, 2017), and *Truck and Bus Tires from the People's Republic of China*, Investigation No. 701-TA-556 and 508 and 731-TA-1311, USITC Pub. 4673 (March 2017) (Final).

³ See CBP Message No. 7094307 dated April 4, 2017.

⁴ See *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, v. United States*, Court No. 17-00078, Slip Op. 18-151 (Ct. Int'l Trade Nov. 1, 2018).

Circuit's (CAFC) opinion in *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374, 1381 (Fed. Cir. 2010), the ITC notified Commerce of this determination upon remand.⁵ In *Diamond Sawblades Manufacturers Coalition*, the CAFC clarified that the same procedures for issuance of an order and collection of cash deposits apply when a material injury determination is made upon remand, and that the ITC should provide notice to Commerce of its remand determination at the time that it is issued, notwithstanding the pendency of ongoing litigation.⁶ Moreover, the CAFC held that Commerce's duty to publish an order is triggered by the ITC's notification of its affirmative injury determination, rather than the date of the publication of the notice of such determination.⁷

Scope of the Order

The products covered by this antidumping duty order are truck and bus tires. For a complete description for the scope of the order, see the "Scope of the Order" in the Appendix of this notice.

Antidumping Duty Order

As stated above, upon remand, the ITC issued its final affirmative determination. In accordance with section 735(d) of the Act and *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010), the ITC notified Commerce of its final determination in its investigation, in which it found that an industry in the United States is materially injured by reason of imports of truck and bus tires from China.⁸ Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this antidumping duty order.

Accordingly, in accordance with section 736(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of truck and bus tires from China. These antidumping duties will be assessed on unliquidated entries of truck and bus tires from China entered, or withdrawn from warehouse, for consumption on or after the effective date of this antidumping duty order.

⁵ See the Letter from the ITC to Commerce dated February 8, 2019.

⁶ See *Diamond Sawblades Manufacturers Coalition*, 626 F.3d at 1381-82.

⁷ *Id.* at 1379, n.2.

⁸ *Id.*

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, effective the publication date of this order, we will instruct CBP to suspend liquidation on all entries of truck and bus tires from China. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits at rates equal to the estimated weighted-average dumping margins indicated below. Accordingly,

effective the publication date of this order, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit at rates equal to the estimated weighted-average dumping margins adjusted for domestic pass-through subsidies and export subsidies found in the amended final determination of the companion countervailing duty investigation of this merchandise imported from China.⁹

Critical Circumstances

In its final affirmative determination upon remand, the ITC found no critical circumstances on imports of truck and bus tires from China. Accordingly, Commerce will not instruct CBP to suspend entries pursuant to section 733(e)(2) of the Act.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin (percent)
Prinx Chengshan (Shandong) Tire Co., Ltd	Prinx Chengshan (Shandong) Tire Co., Ltd	9.00
Actyon Tyre Resources Co., Limited	Chao Yang Long March Tyre Co., Ltd	9.00
Actyon Tyre Resources Co., Limited	Shandong Haohua Tires Co., Ltd	9.00
Actyon Tyre Resources Co., Limited	Shandong Longyue Rubber Co., Ltd	9.00
Aosen Tire Co., Ltd	Qingdao Taifa Group Co., Ltd	9.00
Aosen Tire Co., Ltd	Shandong Chuanghua Tire Co., Ltd	9.00
Aosen Tire Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Aosen Tire Co., Ltd	Shandong Hugerubber Co., Ltd	9.00
Aosen Tire Co., Ltd	Shandong Yongsheng Rubber Group Co., Ltd	9.00
Aosen Tire Co., Ltd	Shandong Zhentai Group Co., Ltd	9.00
Beijing BOE Commerce Co., Ltd	China National Tyre & Rubber Guilin Co., Ltd	9.00
Beijing BOE Commerce Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Best Choice International Trade Co., Ltd	Aeolus Tyre Co., Ltd	9.00
Best Choice International Trade Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd	9.00
Best Choice International Trade Co., Ltd	Shan Dong Kaixuan Rubber Co., Ltd	9.00
Best Choice International Trade Co., Ltd	Sichuan Kalevei Technology Co., Ltd	9.00
Best Choice International Trade Co., Ltd	ZC Rubber Group Co., Ltd	9.00
Bestyre International Industrial Limited	Chaoyang Long March Tyre Co., Ltd	9.00
Bestyre International Industrial Limited	Chaoyang Long March Tyre New Co., Ltd	9.00
BOE Commerce Co., Ltd	Aeolus Tyre Co., Ltd	9.00
BOE Commerce Co., Ltd	China National Tyre & Rubber Guilin Co., Ltd	9.00
BOE Commerce Co., Ltd	Shandong Anchi Tyres Co., Ltd	9.00
BOE Commerce Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
BOE Commerce Co., Ltd	Shandong Hengyu Rubber Co., Ltd	9.00
BOE Commerce Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	9.00
BOE Commerce Co., Ltd	Shandong Jinyu Tyre Co., Ltd	9.00
BOE Commerce Co., Ltd	Zhucheng Guoxin Rubber Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Province Sanli Tire Manufactured Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Vheal Group Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd	9.00
Briway Tire Co., Ltd	Shandong Yuelong Group	9.00
Briway Tire Co., Ltd	Sichuan Tyre & Rubber Co., Ltd	9.00
Briway Tire Co., Ltd	Weifang Shunfuchang Rubber and Plastic Products Co., Ltd	9.00
Briway Tire Co., Ltd	Sichuan Kalevei Technology Co., Ltd	9.00
Chonche Auto Double Happiness Tyre Corp. Ltd	Chonche Auto Double Happiness Tyre Corp. Ltd	9.00
Chongqing Hankook Tire Co., Ltd	Chongqing Hankook Tire Co., Ltd	9.00
Cooper Tire (China) Investment Co., Ltd	Qingdao Ge Rui Da Rubber Co., Ltd	9.00
Daking Industrial Co., Limited	Shandong Huasheng Rubber Co., Ltd	9.00
Fleming Limited	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Fleming Limited	Qingdao Yellow Sea Rubber Co., Ltd	9.00
Fleming Limited	Shandong Wanshine Tire Co., Ltd	9.00
Fleming Limited	Shandong Yinbao Tyre Group Co., Ltd	9.00
Giti Tire (Anhui) Company Ltd	Giti Tire (Anhui) Company Ltd	9.00

⁹ See *Final Determinations*, 82 FR at 8604. See also *Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order (Countervailing Duty Order)*, signed concurrently with this notice. In the *Final Determination*, we explained that the countervailing duty rate attributable to domestic pass-through subsidies and export subsidies is 27.59 percent and, if the ITC makes an affirmative final determination, the adjusted cash deposit rate will be zero percent for Prinx Chengshan

(Shandong) Tire Co., Ltd. (PCT), the non-selected separate rate respondents, and the China-wide Entity. See *Final Determinations*, 82 FR at 8604. The amended final determination of the concurrent countervailing duty investigation has changed the countervailing duty rate attributable to domestic pass-through subsidies and export subsidies to 19.74 percent. See *Countervailing Duty Order* at 3, n.9, and the Memorandum, "Truck and Bus Tires from the People's Republic of China: Amended Cash Deposit Rate for the China-Wide Entity" dated

concurrently with this notice. We deducted this 19.74 percentage point from the calculate margins for PCT, the non-selected separate rate respondents, and the China-wide entity. This amended countervailing duty rate changes the adjusted cash deposit rate for China-wide entity from zero percent to 2.83 percent but the adjusted cash deposit rates for PCT and the non-selected separate rate respondents remain at zero percent.

Exporter	Producer	Weighted-average margin (percent)
Giti Tire (Anhui) Company Ltd	Giti Tire (Fujian) Company Ltd	9.00
Giti Tire (Anhui) Company Ltd	Giti Tire (Yinchuan) Company Ltd	9.00
Giti Tire (Fujian) Company Ltd	Giti Tire (Anhui) Company Ltd	9.00
Giti Tire (Fujian) Company Ltd	Giti Tire (Fujian) Company Ltd	9.00
Giti Tire (Fujian) Company Ltd	Giti Tire (Yinchuan) Company Ltd	9.00
Giti Tire (Yinchuan) Company Ltd	Giti Tire (Anhui) Company Ltd	9.00
Giti Tire (Yinchuan) Company Ltd	Giti Tire (Fujian) Company Ltd	9.00
Giti Tire (Yinchuan) Company Ltd	Giti Tire (Yinchuan) Company Ltd	9.00
Giti Tire Global Trading Pte. Ltd	Giti Tire (Anhui) Company Ltd	9.00
Giti Tire Global Trading Pte. Ltd	Giti Tire (Fujian) Company Ltd	9.00
Giti Tire Global Trading Pte. Ltd	Giti Tire (Yinchuan) Company Ltd	9.00
Goodyear Dalian Tire Co., Ltd	Goodyear Dalian Tire Co., Ltd	9.00
Hongkong Tiancheng Investment & Trading Co., Limited	Shandong Linglong Tyre Co., Ltd	9.00
Hongtyre Group Co.	Prinx Chengshan (Shandong) Tire Co., Ltd	9.00
Hongtyre Group Co.	Shandong Bayi Tyre Manufacture Co., Ltd	9.00
Jiangsu General Science Technology Co., Ltd	Jiangsu General Science Technology Co., Ltd	9.00
Jiangsu Hankook Tire Co., Ltd	Jiangsu Hankook Tire Co., Ltd	9.00
Koryo International Industrial Limited	Chaoyang Long March Tyre Co., Ltd	9.00
Koryo International Industrial Limited	Shandong Anchi Tyres Co., Ltd	9.00
Koryo International Industrial Limited	Shandong Hugerubber Co., Ltd	9.00
Koryo International Industrial Limited	Shandong Sangong Rubber Co., Ltd	9.00
Koryo International Industrial Limited	Shandong Wanshine Tyre Co., Ltd	9.00
Koryo International Industrial Limited	Sichuan Tyre & Rubber Co., Ltd	9.00
Kumho Tire Co., Inc.	Nanjing Kumho Tire Co., Ltd	9.00
Longkou Xinglong Tyre Co., Ltd	Longkou Xinglong Tyre Co., Ltd	9.00
Maxon Int'l Co., Limited	Shandong Anchi Tyres Co., Ltd	9.00
Maxon Int'l Co., Limited	Triangle Tyre Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Ningxia Shenzhou Tyre Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Sichuan Kalevei Technology Co., Ltd	9.00
Megalith Industrial Group Co., Ltd	Xingyuan Tyre Group Co., Ltd	9.00
Michelin Asia-Pacific Export (HK) Limited	Michelin Shenyang Tyre Co., Ltd	9.00
Newland Tyre Int'l Limited	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Noble Manufacture Co., Ltd	Qingdao Hongchi Tyre Co., Ltd	9.00
Philixx Tyres and Accessories Limited	Shandong Huasheng Rubber Co., Ltd	9.00
Philixx Tyres and Accessories Limited	Xingyuan Tyre Group Co., Ltd	9.00
Philixx Tyres and Accessories Limited	Shandong Vheal Group Co., Ltd	9.00
Q&J Industrial Group Co., Limited	Chaoyang Langma Co., Ltd	9.00
Q&J Industrial Group Co., Limited	Qiangdao Huanghai Rubber Co., Ltd	9.00
Q&J Industrial Group Co., Limited	Shandong Hongsheng Rubber Co., Ltd	9.00
Q&J Industrial Group Co., Limited	Shandong Huasheng Rubber Co., Ltd	9.00
Q&J Industrial Group Co., Limited	Shandong Xingyuan Group	9.00
Q&J Industrial Group Co., Limited	Sichuan Kailiwei Technology Co., Ltd	9.00
Qingdao Au-Shine Group Co., Ltd	Shandong Gulun Rubber Co., Ltd	9.00
Qingdao Champion International Trading Co., Ltd	Shandong Cocrea Tyre Co., Ltd	9.00
Qingdao Champion International Trading Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Qingdao Champion International Trading Co., Ltd	Zhucheng Sinoroad Rubber Co., Ltd	9.00
Qingdao Fudong Tyre Co., Ltd	Qingdao Fudong Tyre Co., Ltd	9.00
Qingdao Fudong Tyre Co., Ltd	Qingdao Xiyangmen Double Camel Tyre Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Aeolus Tyre Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Chaoyang Long March Tyre Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Chonche Auto Double Happiness Tyre Corp. Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Double Coin Holdings Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Hangzhou Zhongce Rubber Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Qingdao Yellow Sea Rubber Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Qingdao Fullrun Tyre Corp. Ltd	Shandong Xingyuan International Trading Co., Ltd	9.00
Qingdao Ge Rui Da Rubber Co., Ltd	Qingdao Ge Rui Da Rubber Co., Ltd	9.00
Qingdao Honghua Tyre Factory	Qingdao Honghua Tyre Factory	9.00
Qingdao Jinhaoyang International Co., Ltd	Double Coin Holdings Ltd	9.00
Qingdao Jinhaoyang International Co., Ltd	Qingdao Fudong Tyre Co., Ltd	9.00
Qingdao Jinhaoyang International Co., Ltd	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd	9.00
Qingdao Jinhaoyang International Co., Ltd	Zhucheng Guoxin Rubber Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Beijing Landy Tire & Tech Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Chaoyang Long March Tyre Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Chonche Auto Double Happiness Tyre Corp. Ltd	9.00
Qingdao Keter International Co., Ltd	Deruibo Tyre Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00

Exporter	Producer	Weighted-average margin (percent)
Qingdao Keter International Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Shandong Huge Rubber Co., Ltd	9.00
Qingdao Keter International Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Chaoyang Long March Tyre Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Chonche Auto Double Happiness Tyre Corp. Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Doublestar Dongfeng Tyre Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Shandong Xingyuan International Trading Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd	9.00
Qingdao Lakesea Tyre Co., Ltd	Sichuan Kalevei Technology Co., Ltd	9.00
Qingdao Milestone Tyres Co., Limited	Shandong Hugerubber Co., Ltd	9.00
Qingdao Milestone Tyres Co., Limited	Xingyuan Tire Group Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Chaoyang Long March Tyre Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	China National Tyre And Rubber Guilin Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Ningxia Shenzhou Tire Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Hengfeng Rubber & Plastic Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	9.00
Qingdao Nama Industrial Co., Ltd	Shandong Wanshine Tyre Co., Ltd	9.00
Qingdao Odyking Tyre Co., Ltd	Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	9.00
Qingdao Qianzhen Tyre Co., Ltd	Qingdao Qianzhen Tyre Co., Ltd	9.00
Qingdao Qizhou Rubber Co., Ltd	Qingdao Qizhou Rubber Co., Ltd	9.00
Qingdao Rhino International Co., Ltd	Dongying JinZheng Tyre Co., Ltd	9.00
Qingdao Rhino International Co., Ltd	Qingdao Aonuo Group	9.00
Qingdao Rhino International Co., Ltd	Shandong Jinwangda Tire Co., Ltd	9.00
Qingdao Rhino International Co., Ltd	Weihai Ping'an Tyre Co., Ltd	9.00
Qingdao Taihao Tyre Co., Ltd	Qingdao Taihao Tyre Co., Ltd	9.00
Qingdao Tanco Tire Industrial & Commercial Co., Ltd	Hebei Tianrui Rubber Co., Ltd	9.00
Qingdao Tanco Tire Industrial & Commercial Co., Ltd	Shandong Hawk International Rubber Co., Ltd	9.00
Qingdao Tanco Tire Industrial & Commercial Co., Ltd	Xingyuan Tires Group	9.00
Qingdao Yellow Sea Rubber Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Aeolus Tyre Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Bayi Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Chonche Auto Double Happiness Tyre Corp. Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Double Coin Holdings Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Guizhou Tyre Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Hangzhou Zhongce Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Haohua Tire Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Hengfeng Rubber and Plastic Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Wosen Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shandong Yongtai Group Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Shengtai Group Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	South China Tire & Rubber Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Weifang Goldshield Tire Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Weifang Shunfuchang Rubber & Plastic Products Co., Ltd	9.00
Qingdao Yongdao International Trade Co., Ltd	Xingyuan Tire Group Co., Ltd	9.00
Rodeo Tire Ltd	Shandong Province Sanli Tire Manufactured Co., Ltd	9.00
Rodeo Tire Ltd	Sichuan Tyre & Rubber Co., Ltd	9.00
Rover Tire Co., Ltd	Aeolus Tyre Co., Ltd	9.00
Rover Tire Co., Ltd	Dongying Fangxing Rubber Co., Ltd	9.00
Rover Tire Co., Ltd	Double Coin Holdings Ltd	9.00
Rover Tire Co., Ltd	Qingdao Doublestar Tire Industrial Co., Ltd	9.00
Rover Tire Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	9.00
Rover Tire Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Rover Tire Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Rover Tire Co., Ltd	Shandong Longyue Rubber Co., Ltd	9.00
Rover Tire Co., Ltd	Shandong Yongsheng Rubber Group Co., Ltd	9.00
Rover Tire Co., Ltd	Wanli Group Trade Limited	9.00
Rover Tire Co., Ltd	Zhongce Rubber Group Company Limited	9.00
Sailun Jinyu Group Co., Ltd	Sailun Jinyu Group Co., Ltd	9.00

Exporter	Producer	Weighted-average margin (percent)
Sailun Jinyu Group Co., Ltd	Shenyang Peace Radial Tyre Manufacturing Co., Ltd	9.00
Shandong Anchi Tyres Co., Ltd	Shandong Anchi Tyres Co., Ltd	9.00
Shandong Haohua Tire Co., Ltd	Shandong Haohua Tire Co., Ltd	9.00
Shandong Haoyu Rubber Co., Ltd	Shandong Haoyu Rubber Co., Ltd	9.00
Shandong Hawk International Rubber Industry Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Shandong Hengfeng Rubber & Plastic Co., Ltd	Shandong Hengfeng Rubber & Plastic Co., Ltd	9.00
Shandong Hengyu Science & Technology Co., Ltd	Shandong Hengyu Science & Technology Co., Ltd	9.00
Shandong Hengyu Science & Technology Co., Ltd	Shandong Hengyu Rubber Co., Ltd	9.00
Shandong Homerun Tires Co., Ltd	Good Friend Tyre Co., Ltd	9.00
Shandong Homerun Tires Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Shandong Homerun Tires Co., Ltd	Shandong Wosen Rubber Co., Ltd	9.00
Shandong Homerun Tires Co., Ltd	Shandong Yongsheng Rubber Group Co., Ltd	9.00
Shandong Homerun Tires Co., Ltd	Weifang Shunfuchang Rubber and Plastic Products Co., Ltd	9.00
Shandong Huasheng Rubber Co., Ltd	Shandong Huasheng Rubber Co., Ltd	9.00
Shandong Hugerubber Co., Ltd	Shandong Hugerubber Co., Ltd	9.00
Shandong Huitong Tyre Co., Ltd	Shandong Huitong Tyre Co., Ltd	9.00
Shandong Kaixuan Rubber Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Shandong Linglong Tyre Co., Ltd	Shandong Linglong Tyre Co., Ltd	9.00
Shandong O'Green Tyres Co., Ltd	Shandong O'Green Tyres Co., Ltd	9.00
Shandong Province Sanli Tire Manufactured Co., Ltd	Shandong Province Sanli Tire Manufactured Co., Ltd	9.00
Shandong Sangong Rubber Co., Ltd	Shandong Sangong Rubber Co., Ltd	9.00
Shandong Transtone Tyre Co., Ltd	Shandong Haohua Tire Co., Ltd	9.00
Shandong Transtone Tyre Co., Ltd	Shandong Hongyu Rubber Co., Ltd	9.00
Shandong Transtone Tyre Co., Ltd	Shandong Kaixuan Rubber Co., Ltd	9.00
Shandong Transtone Tyre Co., Ltd	Weifang Yuelong Rubber Co., Ltd	9.00
Shandong Vheal Group Co., Ltd	Shandong Vheal Group Co., Ltd	9.00
Shandong Wanda Boto Tyre Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	9.00
Shandong Wanshine Tire Co., Ltd	Shandong Wanshine Tire Co., Ltd	9.00
Shandong Xingyuan Tire Group Co., Ltd	Shandong Xingyuan Tire Group Co., Ltd	9.00
Shandong Yinbao Tyre Group Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd	9.00
Shandong Yongfeng Tyres Co., Ltd	Shandong Yongfeng Tyres Co., Ltd	9.00
Shandong Yongsheng Rubber Group Co., Ltd	Shandong Yongsheng Rubber Group Co., Ltd	9.00
Shandong Yongtai Group Co., Ltd	Shandong Yongtai Group Co., Ltd	9.00
Shanghai Durotyre International Trading Co., Ltd	Chaoyang Long March Tyre Co., Ltd	9.00
Shanghai Durotyre International Trading Co., Ltd	Double Happiness Tyre Industrial Co., Ltd	9.00
Shengtai Group Co., Ltd	Shengtai Group Co., Ltd	9.00
Shengtai Group Co., Ltd	Shandong Zhushenghua Rubber Co., Ltd	9.00
Shenzhen Zhongjin Import & Export Co., Ltd	Hefei Wanli Tire Co., Ltd	9.00
Shenzhen Zhongjin Import & Export Co., Ltd	South China Tire & Rubber Co.	9.00
Shenzhen Zhongjin Import & Export Co., Ltd	Weifang Shunfuchang Rubber And Plastics Products Co., Ltd	9.00
Shifeng Juxing Tire Co., Ltd	Shifeng Juxing Tire Co., Ltd	9.00
Shuma Tyre International (Qingdao) Co., Ltd	Shandong Wanshine Tire Co., Ltd	9.00
Sichuan Kalevei Technology Co., Ltd	Sichuan Kalevei Technology Co., Ltd	9.00
Sinotyre International Group Co., Ltd	Dongying City Fangxing Rubber Co., Ltd	9.00
Sinotyre International Group Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Sportrak Tire Group Limited	Bayi Rubber Co., Ltd	9.00
Sportrak Tire Group Limited	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd	9.00
Sportrak Tire Group Limited	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Tianjin Leviathan International Trade Co., Ltd	NDI Tire (Qingdao) Co., Ltd	9.00
Tianjin Leviathan International Trade Co., Ltd	Qingdao Nama Industrial Co., Ltd	9.00
Tianjin Leviathan International Trade Co., Ltd	Shandong Haohua Tire Co., Ltd	9.00
Tianjin Leviathan International Trade Co., Ltd	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Tianjin Leviathan International Trade Co., Ltd	Xingyuan Tire Group Co., Ltd	9.00
Top Tyre Industry Co., Limited	Shandong Hawk International Rubber Industry Co., Ltd	9.00
Toyo Tire (Zhucheng) Co., Ltd	Toyo Tire (Zhucheng) Co., Ltd	9.00
Triangle Tyre Co., Ltd	Triangle Tyre Co., Ltd	9.00
Tyrechamp Group Co., Limited	South China Tire & Rubber Co., Ltd	9.00
Tyrechamp Group Co., Limited	Zhongce Rubber Group Company Limited	9.00
Wanli Group Trade Limited	South China Tire & Rubber Co., Ltd.,	9.00
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	9.00
Weihai Ping'an Tyre Co., Ltd	Weihai Ping'an Tyre Co., Ltd	9.00
Weihai Zhongwei Rubber Co., Ltd	Weihai Zhongwei Rubber Co., Ltd	9.00
Wendeng Sanfeng Tyre Co., Ltd	Wendeng Sanfeng Tyre Co., Ltd	9.00
Xuzhou Xugong Tyres Co., Ltd	Xuzhou Xugong Tyres Co., Ltd	9.00
Xuzhou Xugong Tyres Co., Ltd	Armour Rubber Company Ltd	9.00
Yokohama Rubber Co., Ltd	Suzhou Yokohama Tire Co., Ltd	9.00
Yongsheng Group Co., Ltd	Shandong Yongsheng Rubber Group Co., Ltd	9.00
Zhongce Rubber Group Co., Ltd	Zhongce Rubber Group Co., Ltd	9.00
Zhucheng Guoxin Rubber Co., Ltd	Zhucheng Guoxin Rubber Co., Ltd	9.00
China-Wide Entity		22.57

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to truck and bus tires from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

This order is published in accordance with sections 736(a) of the Act and 19 CFR 351.211.

Dated: February 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of the order covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this order may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a "TR" or "HC" suffix in their size designations are covered by this order regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the "Truck-Bus" section of the *Tire and Rim Association Year Book*, as updated annually,

unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, e.g., a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this order are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) The designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2019-02656 Filed 2-14-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427-8401; fax: (301) 713-0376.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan (Permit Nos. 21585 and 21636), Sara Young (Permit No. 22183), Carrie Hubard (Permit No. 21485), and Amy Hapeman (Permit No. 22222); at (301) 427-8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to www.federalregister.gov and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous Federal Register notice	Permit or amendment issuance date
21485	0648-XG288 ..	Jooke Robbins, Ph.D., Center for Coastal Studies, 5 Holway Avenue, Provincetown, MA 02657.	83 FR 30701; June 29, 2018.	December 19, 2018.
21585	0648-XG313 ..	Oregon State University, Marine Mammal Institute, 2030 Southeast Marine Science Drive, Newport, OR 97365 (Responsible Party: Bruce Mate, Ph.D.,).	83 FR 31737; July 9, 2018	December 20, 2018.
21636	0648-XG493 ..	Joshua Schiffman, M.D., University of Utah, 2000 Circle of Hope Drive, Salt Lake City, UT 84112.	83 FR 55146; November 2, 2018.	December 6, 2018.
22183	0648-XG539 ..	Michelle Shero, Ph.D., 266 Woods Hole Road, Woods Hole, MA 02543.	83 FR 55147; November 2, 2018.	December 20, 2018.
22222	0648-XG415 ..	Tamara McGuire, Ph.D., 310 W. 123rd Avenue, Anchorage, AK 99515.	83 FR 41062; August 17, 2018.	December 17, 2018.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not

operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: February 12, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 2019–02486 Filed 2–14–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG786

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Acting Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This permit would allow Coonamesett Farm Foundation to test the selectivity of alternate gillnet configurations to target haddock while reducing catch of other groundfish species.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before March 4, 2019.

ADDRESSES: You may submit written comments by any of the following methods:

- **Email:** NMFS.GAR.EFP@noaa.gov. Include in the subject line “Comments on Testing Selectivity and Raised Webbing Gillnets on Target and Non-Target Species in the Northeast Haddock Fishery.”

- **Mail:** Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Testing Selectivity of Alternative Gillnet Configurations in the Northeast Haddock Fishery.”

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, 978–281–9236, Kyle.Molton@noaa.gov.

SUPPLEMENTARY INFORMATION:

Coonamesett Farm Foundation (CFF) submitted a complete application for an exempted fishing permit (EFP) on November 7, 2018, to conduct commercial fishing activities that the regulations would otherwise restrict. The application is a renewal of an EFP originally issued in December 2017. The EFP would authorize five vessels to test alternative gillnet configurations for haddock and to temporarily retain undersized catch for measurement and data collection. The applicant has requested exemptions from minimum mesh size regulations at 50 CFR 648.80(a)(4)(iv) and § 648.8(b)(2)(iv), and the prohibition on possessing groundfish below the minimum size § 648.83(a). These exemptions are necessary because vessels on commercial groundfish trips are prohibited from using gillnets with mesh size less than 6.5 inches (16.51 cm) and from retaining undersized groundfish. The applicant is also requesting a new exemption from the Closed Area I North Georges Bank Spawning Groundfish Closure at § 648.81(c)(3), which we do not intend to approve, as further described below.

The project titled “Testing Selectivity and Raised Webbing Gillnets on Target and Non-Target Species in the Northeast Haddock Fishery” would continue to be conducted by CFF. The study would take place on Georges Bank and in southern New England from February 2019 through August 2019, with the five participating vessels fishing no more than 19 trips. Vessels would fish a maximum of 32 gillnets, each 300 feet (91.44 m) long, in strings made up of 4 nets each. Two of the nets in each four-net string would use standard 6.5-inch (16.51-cm) mesh and two would be 6.0-inch (15.24-cm) mesh. One net of each mesh size in each string would be rigged with a 30-inch (76.2-cm) raised webbing section along the bottom. Two to three hauls of the nets are expected during each day at sea with an average soak time of 6 hours for each set.

A CFF researcher or technician would accompany all trips that occur under this EFP to identify all fish caught, as well as measure and weigh catch.

Undersized fish would be discarded as quickly as possible after sampling. All Northeast multispecies of legal size would be landed, and all catch (including discards) would be attributed to the vessel’s sector annual catch entitlement, consistent with standard catch accounting procedures.

We do not intend to approve the applicant’s request to allow access to the seasonal Closed Area I North Georges Bank Spawning Groundfish Closure because of potential negative impacts to spawning groundfish. CFF requested access to the area because it is an area identified to have a high abundance of haddock during the closure period. CFF states that having access to this area would allow for a higher likelihood of achieving statistically significant results. CFF further stated in their application that impacts to the resource from access would be reduced because the gear being tested is hypothesized to reduce bycatch of demersal species, including cod. Despite these considerations, we are concerned that, if access were granted, disruption of spawning activity and significant catch of spawning fish could lead to negative groundfish impacts and undermine the benefits this newly approved closure is intended to provide. Studies have shown that gillnet fishing activity can disrupt groundfish spawning behavior and could reduce the reproductive success of spawning aggregations. Further, we are concerned that the condition and behavior of spawning fish may influence their selectivity in gillnet gear. Because of the significant biomass of haddock on Georges Bank, and the relatively small area and season of the closure, access to the closure is not necessary to test the viability of alternative gillnet configurations targeting haddock on Georges Bank.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: February 12, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–02522 Filed 2–14–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XG500

Marine Mammals; Administration of the National Inventory of Marine Mammals

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

ACTION: Notice; request for comments.

SUMMARY: The Marine Mammal Protection Act of 1972 (MMPA) requires the National Marine Fisheries Service (NMFS) to establish and maintain an inventory of marine mammals in zoos and aquariums. The Office of Protected Resources maintains the inventory for marine mammals under NMFS' jurisdiction including cetaceans and pinnipeds [excluding walrus (*Odobenus rosmarus*)]. The MMPA requires that the holders of marine mammals in human care provide the inventory data. We propose to make our current database, the National Inventory of Marine Mammals (NIMM), accessible to holders of marine mammals for inventory reporting and to the public for access to the inventory data, which is regularly requested through the Freedom of Information Act (FOIA). NMFS is requesting public comment on proposed policies and procedures for the administration and maintenance of the online inventory database, NIMM, including maintenance of historical information, reporting births and stillbirths, reporting cause of death, and other administrative procedures for NIMM.

DATES: Comments must be received by 11:59 p.m. Eastern on April 16, 2019.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2019–0012, by any of the following methods:

- *Electronic Submission:* Submit electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, enter NOAA–NMFS–2019–0012 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Comment Now” icon on the right of that line.

- *Mail:* Comments on the application should be addressed to: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; ATTN: Jolie

Harrison, Chief, Permits and Conservation Division.

- *Fax:* (301) 713–0376; ATTN: Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources.

Instructions: Comments must be submitted by one of the above methods. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, Amy.Sloan@noaa.gov, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Statutory Authority**

Prior to 1994, inventory reporting was required as part of special exception permits issued under Section 104 of the MMPA (16 U.S.C. 1361 *et seq.*). These permits incorporated conditions associated with maintenance of marine mammals and required animal-specific inventory reporting (e.g., animal identifiers, sex, transports, births of progeny, and death); and, permit-specific data (e.g., permit number, collector, and location of collection or import). In 1994, the MMPA was amended to remove NMFS' (and the U.S. Fish and Wildlife Service's, or USFWS) jurisdiction over the handling, care, transport, and related reporting requirements for marine mammals held for public display purposes; this is now under the sole jurisdiction of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act of 1966 (7 U.S.C. 2131 *et seq.*) and its implementing regulations (9 CFR 3.100 to 3.118). The 1994 amendments added the requirement for NMFS (and USFWS) to establish and maintain a marine mammal inventory that includes information on individual marine mammals in human care for public display, or those transferred from public display for scientific research or enhancement purposes. Section 104(c)(10) of the MMPA requires

holders (*i.e.*, Owners¹ and Facilities²) report the following inventory data for each individual marine mammal:

- Animal name or other identification,
- Sex,
- Estimated or actual birth date,
- Date animal enters and leaves a collection,
- Source of the animal,
- Name of recipient,
- Whether the animal is from a stranding, and
- Date and cause of death (when determined).

In addition, section 104(c)(8) of the MMPA (also established in the 1994 amendments) requires marine mammal holders to report the birth of a marine mammal within 30 days of the birth. Owners and Facilities must also give notice 15 days before transferring ownership or physically transporting a marine mammal to another facility [MMPA sections 104(c)(2)(E) and 104(c)(8)(B)(i)(II)], and must verify the transfer or transport within 30 days of the event.

Currently, owners and facilities submit a form to report inventory changes (OMB No. 0648–0084; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/national-inventory-marine-mammals>), and NMFS' Office of Protected Resources staff enters the inventory information into a database. The current web based platform, NIMM, was developed in 2014 to replace an outdated DOS-based system; data from the old system was migrated to NIMM. From August to November 2017, we made NIMM available online to zoos and aquariums to review and correct existing inventory data and to enter new data. During that time we recognized the need to clarify policies and procedures, as presented in this notice, and decided to take NIMM offline until we finalized these policies.

NIMM serves as the current data repository containing data obtained since 1972 and reflects the inventory reporting requirements outlined as part of permit conditions (pre-1994) and the inventory requirements required as a result of the 1994 amendments to the MMPA. The inventory data maintained by NMFS since 1972 are public information accessible via FOIA (5 U.S.C. 552).

We propose to make NIMM an accessible online system to (1) give marine mammal Owners and Facilities access rights to verify and correct their data and report inventory changes (in

¹ Person or institution with legal custody of the animal.

² Physical location of the animal.

lieu of submitting a form for NMFS staff to enter), and (2) allow members of the public read-only access and the ability to download inventory reports from NIMM (in lieu of requesting information via FOIA).

Below we outline proposed policies and procedures for the use and administration of NIMM. Input received from the public will be considered prior to making NIMM available to holders and the public, and for updating the OMB 0648–0084 instructions for inventory reporting, which expire December 31, 2019. A separate **Federal Register** notice will be available during the process for renewing and updating the OMB 0648–0084 instructions.

Maintenance of Historical Data

We propose to continue to maintain historical data in NIMM as well as contemporary data. Holders (*i.e.*, Owners and Facilities) would be able to correct historical data if errors were identified, including existing animal names, animal identification numbers (IDs), and other data. Names and IDs would not be deleted but could be updated independently of other actions and a history of name and ID changes would be maintained. For new data (*e.g.*, births, transfers, and transports), holders must provide either an animal ID or name, but could choose to report both.

As mentioned above, historical data prior to 1994 was provided to NMFS as part of reporting conditions associated with special exception permits issued under Section 104 of the MMPA (for public display, scientific research, or enhancement). Data after the 1994 amendments was provided as required by the added section 104(c)(10) inventory requirements. NIMM is NMFS' record for all inventory data—past, present, and future.

As set out by Congress, the inventory tracks the history of individual marine mammals over time (*e.g.*, when they are captured or born, when and to where they are transported) up to and after the death of that animal (*i.e.*, cause of death must be reported “when determined,” which may be months depending on analyses performed). NMFS maintains associated hard copy and electronic records separate from NIMM, and the goal is to eliminate those duplicative records so that NIMM can be the official record in one electronic format. If historical information were removed from NIMM, it would no longer provide a complete history of the marine mammals subject to the inventory over time, and would defeat the purpose of having a publicly accessible database, as NMFS would still be required to

perform hard copy searches for inventory data to respond to FOIA inquiries.

Reporting Births and Stillbirths

We propose to clarify the requirements for reporting births and stillbirths for purposes of the inventory. As noted above, the MMPA requires that Owners and Facilities report births of progeny within 30 days after the birth. The Act does not explicitly address stillbirths. We propose that any offspring alive at the time of birth must be reported to the inventory regardless of how long it survives. Similarly, the death of such offspring, no matter how long it lives, must be reported. We believe that the intent of the inventory is to track animals over their lifetime because the inventory requires both birth and death information. We recognize the need to clarify for the purposes of NIMM, and are seeking public comment on, whether only live births should be reported to the inventory or if stillbirths should also be reported; and, whether and how they should be distinguished.

The definition of stillbirth is not consistently defined within zoological or veterinary scientific literature. Some marine mammal holders define stillbirths as when the fetus or neonate dies before (*i.e.*, late-term miscarriage), during, or within 24–48 hours after birth (*e.g.*, Bergfelt *et al.* 2011). Marine mammal holders have also noted, though, that the majority of neonatal deaths [of bottlenose dolphins (*Tursiops truncatus*)] within the first 24 hours of life are primarily attributed to trauma from maternal or conspecific aggression (Sweeney *et al.* 2010). Studies of domesticated animals such as pigs (Alonso-Spilsbury *et al.* 2005) and cattle (Philipsson *et al.* 1998) reflect the perinatal definition of stillbirth. In dogs and cats, conversely, stillbirth has been defined as a full term neonate born dead (Lamm *et al.* 2012). Similarly, captive polar bears have been labeled as stillborn if listed by the breeding studbook as living 0.00 years (*i.e.*, never alive) (Curry *et al.* 2015). Fetal deaths can occur during distinct gestational periods. Early term pregnancies that fail are either naturally aborted (miscarried) or reabsorbed into the body. NMFS recognizes that miscarriages occur naturally across mammalian taxa, including marine mammals. However, late-term fetuses are more likely to be born alive, especially with monitoring and care of the mother throughout the pregnancy. Immature neonates can be anticipated by following fetal maturation and growth using diagnostic ultrasound, thus, husbandry

intervention opportunities may increase neonate survivorship (Sweeney *et al.* 2010).

Stillbirths and neonatal deaths have been under-reported to some marine mammal zoological studbook keepers (*e.g.*, Curry *et al.* 2015, Mason 2010). Until now, NMFS has not explicitly defined birth and/or stillbirth for purposes of the inventory, and both have been reported inconsistently (Temte 1993). To provide clarity in MMPA inventory reporting requirements, we propose to define a birth as “the emergence of a living marine mammal from the body of its mother, regardless of how long it survives,” and stillbirth as “the emergence of a dead fetus from the body of its mother including late-term miscarriages.” We are seeking public comment on these definitions and propose to standardize guidance for such inventory reporting after consideration of public comment on this topic.

Reporting Cause of Death

We propose to standardize cause of death reporting in NIMM as described in Table 1 below. Owners and Facilities may update existing data already in NIMM to conform to the proposed, two-tiered standardized reporting.

Cause of death data has not been reported consistently nor have we provided Owners and Facilities with clear guidance in the past. The electronic database previous to NIMM included only four categories associated with cause of death: “Euthanasia (life-threatening condition involving pain/suffering),” “Euthanasia (other),” “Premature/Stillbirth,” and “Other Cause.” The majority of data include “Other Cause,” which were reported via filling out a text field (post-1994) or providing necropsy reports (pre-1994). As a result, causes of death reported by Owners and Facilities have historically included various levels of detail. In an effort to standardize the reporting of deaths, we propose categories in lieu of *ad libitum* reports of death as provided in the text field.

We propose these standard categories as a two-tier system (below) that reflects the body system or circumstance of the cause of death (Tier 1) with the significant findings underlying that body system or circumstance (Tier 2). The following categories were developed in consultation with NMFS and APHIS veterinarians and the U.S. Marine Mammal Commission, and are reflective of comparable research that examines animal mortality trends (*e.g.*, Grieg *et al.* 2005, Colgrove *et al.* 2005).

TABLE 1—PROPOSED STANDARDIZED NIMM TIERED CATEGORIES FOR REPORTING FOR MARINE MAMMAL PRIMARY CAUSES OF DEATH

Tier 1: Body system or circumstance	Tier 2: Significant findings * = details must be provided
Cardiovascular	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Other*.
Dermatologic	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Parasitic; Infectious—Viral; Inflammatory; Metabolic; Toxic; Vascular; Other*.
Endocrine	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Parasitic; Infectious—Viral; Inflammatory; Metabolic; Toxic; Vascular; Other*.
External Factor	Adverse Drug Reaction; Anesthetic/Sedation Death; Drowning; Euthanasia; Husbandry Related; Hypothermia; Hyperthermia; Indeterminate; Transport Related; Other*.
Gastrointestinal	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Malnutrition; Foreign Body Ingestion/Impaction; Other*.
Geriatric/Age-Related Death	Euthanasia*; Other*.
Liver	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Other*.
Lymphatic	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Parasitic; Infectious—Viral; Inflammatory; Metabolic; Toxic; Vascular; Other*.
Musculoskeletal	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Parasitic; Infectious—Viral; Inflammatory; Metabolic; Toxic; Vascular; Trauma/Serious Injury; Other*.
Neurological	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Other*.
Perinatal	Dystocia; Euthanasia; Failure to Thrive; Premature Death; Parental Neglect; Spontaneous Abortion; Other*.
Reproductive	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Other*.
Respiratory	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Parasitic; Infectious—Viral; Inflammatory; Metabolic; Toxic; Vascular; Other*.
Sepsis	Bacterial; Fungal; Viral; Parasitic; Other*.
Trauma/Serious Injury	Exhibit Related; Human Inflicted; Interspecific; Conspecific/Intraspecific; Natural Event; Parental Behavior; Self-Inflicted; Other*.
Undetermined*	No secondary tier categories provided; additional details are required.
Urogenital	Cancer/Neoplastic—Metastatic; Cancer/Neoplastic—Primary; Congenital; Degenerative; Euthanasia; Infectious—Bacterial; Infectious—Fungal; Infectious—Viral; Inflammatory; Metabolic; Infectious—Parasitic; Toxic; Vascular; Other*.

The categories identified under each tier are meant to be broad and encompass the primary, or leading, cause of death for the animal. For the categories denoted by an asterisk (*), additional information would be reported in a text box to clarify the cause of death. Definitions and guidance for each category would be included in a User Guide for both Owners/Facilities and the public. We seek public comment on each of the Tier 1 and Tier 2 cause of death categories within Table 1 and will consider comments prior to finalizing our guidance. Specifically, we are interested in knowing if categories in either tier are missing, and if key information should be included when defining the Tier 2 categories.

Consistent with the 1998 Memorandum of Understanding (MOU)

established between NMFS, USFWS, and APHIS, inventory information is available to and shared with APHIS. NMFS notifies APHIS when any changes to marine mammal collections, including deaths and underlying causes, are reported. APHIS has discretion to follow-up directly with marine mammal facilities based on mortality information provided to the inventory.

Pending Transfers and Transports

We propose to utilize NIMM as a mechanism for Owners and Facilities to notify NMFS of pending transfers (change in ownership) and transports (physical change in location). The MMPA requires a 15-day prior notification of such actions under sections 104(c)(2)(E) and 104(c)(8)(B)(i)(II).

In some cases, proposed transfers and transports are never carried out for various reasons including identification of multiple animals for transport (only a select number are actually shipped), medical or behavioral considerations, and collection planning changes. Because the inventory is intended to reflect actual ownership and location data, pending transfers and transports would not be viewable to the public in NIMM until after they occur and have been confirmed by the receiving Owner/Facility. As is the case currently, pending notifications for transfer or transport could be requested through FOIA.

Owner and Facility Data Review/ Verification and Data Disclaimer

We propose to provide Owners and Facilities the ability in NIMM to indicate for each of their animal records whether their data has been reviewed, updated, and verified using records in their possession. These review fields would enable Owners and Facilities the option to provide additional assurances regarding the quality of their data. The proposed Owner/Facility review fields include:

- *Data certified correct*—data has been reviewed and is correct, and/or errors were found and corrected by the Owner or Facility;
- *Data reviewed with errors*—data has been reviewed and errors have been identified but not corrected;
- *Data cannot be certified correct*—data has been reviewed but data cannot be confirmed correct (e.g., because the original records are no longer available); and
- *Data not reviewed*—the Owner or Facility indicates the data has not been reviewed for that animal, and thus, the accuracy of the data cannot be confirmed.

The review field would be left blank if no action has been taken by an Owner or Facility. Data submitted for inventory purposes in NIMM could not be provided by third parties or entered by NMFS from sources other than the marine mammal holders (e.g., websites or media/news releases); a marine mammal Owner or Facility must provide the data. However, information provided by third parties or found in the public domain may be submitted to Owners and Facilities for their review and appropriate action in compliance with the MMPA.

The inventory has gone through numerous data migrations and we acknowledge errors may exist. This may be particularly true for historical data where data cannot be recovered or verified (e.g., for facilities that no longer exist). In addition to providing users an option to indicate the accuracy of their data, we propose a disclaimer regarding the integrity of the NIMM inventory data as follows: “The data in NIMM, going back to 1972, has gone through numerous database migrations and errors may exist. There may be data that cannot be recovered or verified. NMFS relies on data self-reported by marine mammal Owners and Facilities. NMFS cannot provide any guarantee as to the accuracy, reliability, or completeness of information.”

Request for Comments and Other Information

NMFS requests substantive comments and information regarding the above-proposed policies and procedures for implementing NIMM. We request that comments be specific and supported by scientific literature where appropriate to inform our decision-making. Comments must be received by 11:59 p.m. on April 16, 2019, to be considered.

References

- Agreement among the National Marine Fisheries Service, NOAA, U.S. Department of Commerce; Fish and Wildlife Service, U.S. Department of the Interior; and APHIS, USDA (July 21, 1998).
- Alonso-Spilsbury, M., Mota-Rojas, D., Villanueva-García, D., Martínez-Burnes, J., Orozco, H., Ramírez-Necoechea, R., & Trujillo, M. E. (2005). Perinatal asphyxia pathophysiology in pig and human: a review. *Animal Reproduction Science*, 90(1–2), 1–30.
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Inventory Report: independent verification of a captive marine mammal database. *Marine Mammal Science*, 9(1), 95–98.

Dated: February 12, 2019.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2019–02485 Filed 2–14–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: March 18, 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.

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.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:

- 5340–00–410–2972—Clamp, Loop, CRES, Teflon-Asbestos, 1/2" Loop x 1/2" Wide
- 5340–00–410–2974—Clamp, Loop, CRES, Teflon-Asbestos, 5/8" Loop x 1/2" Wide
- 5340–00–420–1749—Clamp, Loop, CRES, Teflon-Asbestos, 1–31/500" Loop x 1/2" Wide

Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Services

Service Type: Janitorial/Custodial
Mandatory for: Food and Drug Administration Building: 240 Hennepin Avenue, South, Minneapolis, MN
Mandatory Source of Supply: Tasks Unlimited, Inc., Minneapolis, MN
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Custodial Services, Shelf Stocking
Mandatory for: Great Lakes Naval Training Center: 2703 Sheridan Road Galley 535, 928 and 1128, Great Lakes, IL
Mandatory for: Fort Monroe, VA
Mandatory Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA)
Service Type: Switchboard Operation
Mandatory for: Veterans Affairs Medical Center, Nashville, TN
Mandatory Source of Supply: Ed Lindsey Industries f/t Blind, Inc., Nashville, TN
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Temporary Medical Record Filing
Mandatory for: Alvin C. York VA Medical Center, Murfreesboro, TN
 VA Medical Center, Nashville, TN
Mandatory Source of Supply: Ed Lindsey Industries f/t Blind, Inc., Nashville, TN
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: JWOD Staffing Services
Mandatory for: GSA, Nationwide, Washington, DC
Mandatory Source of Supply: Ed Lindsey Industries f/t Blind, Inc., Nashville, TN
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Janitorial/Custodial
Mandatory for: Armed Forces Reserve Center: 1702 Tahoma Avenue Yakima, WA
Mandatory Source of Supply: Yakima Specialties, Inc., Yakima, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building—Everett, 3002 Colby Avenue, Everett, WA
Mandatory Source of Supply: AtWork!, Bellevue, WA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 815 Airport Way, U.S. Department of Justice, INS, Seattle, WA
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: FEDERAL PRISON SYSTEM, TERMINAL ISLAND, FCI
Service Type: Janitorial/Custodial
Mandatory for: U.S. Customs House: 220 NE 8th Avenue, Portland, OR
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: TREASURY, DEPARTMENT OF THE
Service Type: Administrative Services
Mandatory for: GSA, Pacific Rim Region PBS: 450 Golden Gate Avenue San Francisco, CA
Mandatory Source of Supply: Toolworks, Inc., San Francisco, CA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Operation of GSA Access Store
Mandatory for: U.S. Federal Building and Courthouse: 450 Golden Gate Avenue, Phillip Burton, San Francisco, CA
Mandatory Source of Supply: Pacific Coast Community Services, Richmond, CA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: #1–9 Chisolm Street #2–1050 Remound Road, Charleston, SC
Mandatory Source of Supply: Dorchester County Board of Disabilities and Special Needs, Summerville, SC
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Custodial Services
Mandatory for: Army Reserve Contracting Center: 1605 Coraopolis Heights Road Coraopolis Satellite Office/PA178 West Pointe Corp Coraopolis, PA
Mandatory Source of Supply: Hancock County Sheltered Workshop, Inc., Weirton, WV
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building: 511 NW Broadway, Portland, OR
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS
Service Type: Custodial Services
Mandatory for: Edward Hines Jr. VA Hospital: Hines Campus Roosevelt Road Hines, IL
 5th Avenue, Hines, IL
Mandatory Source of Supply: Jewish Vocational Service and Employment Center, Chicago, IL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Food Service
Mandatory for: Illinois National Guard, Lincoln's Challenge Academy: 205 W. Dodge, Building 303, Rantoul, IL
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: DEPT OF DEFENSE, DOD/OFF OF SECRETARY OF DEF (EXC MIL DEPTS)
Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Corps of Engineers: Saylorville Lake Project Saylorville Lake, IA
Mandatory Source of Supply: Goodwill Solutions, Inc., Johnston, IA
Contracting Activity: DEPT OF THE ARMY, W07V ENDIST ROCK ISLAND
Service Type: Recycling Service
Mandatory for: Federal Center/Battle Creek: Buildings 1, 1A, 1B, 2, 2A, and 2C 74 North Washington, Battle Creek, MI
Mandatory Source of Supply: Navigations, Incorporated, Battle Creek, MI
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Shelf Stocking, Custodial & Warehousing
Mandatory for: Travis Air Force Base, CA
Mandatory Source of Supply: PRIDE Industries, Roseville, CA
Mandatory for: Fort Gillem, GA
Mandatory Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA)
Service Type: Shelf Stocking & Custodial
Mandatory for: Homestead Air Reserve Base, FL
Mandatory Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA)
Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center—Windsor Locks: 700 South Quaker Lane, West Hartford, CT BG J.W. Middleton: 22 Phelps Road, West Hartford, CT
Mandatory Source of Supply: Allied Community Services, Inc., Enfield, CT
Contracting Activity: DEPT OF THE ARMY, W6QM MICC—FT DIX (RC—E)
Service Type: Administrative Services
Mandatory for: Fort Sam Houston: Directorate of Public Works Fort Sam Houston, TX
Mandatory Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Janitorial/Custodial
Mandatory for: Naval Reserve Readiness Center, Seattle, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND
Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Post Office 18th & K Streets, Merced, CA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Administrative Services
Mandatory for: Delaware Valley Office: GSA Region3, Trenton NJ
Mandatory Source of Supply: Elwyn, Aston, PA
Contracting Activity: Public Buildings Service, GSA/PBS/R03 North Service Center
Service Type: Administrative Services
Mandatory for: GSA, Regional Emergency Management Control Center: GSA Complex, Auburn, WA
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Administrative Services
Mandatory for: Federal Supply Service: 1500 E. Bannister Road Kansas City, MO
Mandatory Source of Supply: JobOne, Independence, MO
Contracting Activity: General Services Administration, FPDS Agency

Coordinator
Service Type: Janitorial/Custodial
Mandatory for: Denver Federal Center:
 Building 85, Denver, CO
Mandatory Source of Supply: North Metro
 Community Services for
 Developmentally Disabled, Westminster,
 CO
Contracting Activity: General Services
 Administration, FPDS Agency
 Coordinator
Service Type: Shelf Stocking & Custodial
Mandatory for: Meridian Naval Air Station,
 Meridian, MS
Mandatory Source of Supply: Alabama
 Goodwill Industries, Inc., Birmingham,
 AL
Contracting Activity: DEFENSE
 COMMISSARY AGENCY (DECA)

Patricia Briscoe,

*Deputy Director, Business Operations (Pricing
 and Information Management).*

[FR Doc. 2019-02510 Filed 2-14-19; 8:45 am]

BILLING CODE 6353-01-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 product(s)
 and service(s) to the Procurement List
 that will be furnished by nonprofit
 agencies employing persons who are
 blind or have other severe disabilities,
 and deletes product(s) and service(s)
 from the Procurement List previously
 furnished by such agencies.

DATES: *Date added to and deleted from
 the Procurement List:* March 17, 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 4/28/2017 (82 FR 81) and 12/14/
 2018 (83 FR 240), the Committee for
 Purchase From People Who Are Blind
 or Severely Disabled published notices
 of proposed additions to the
 Procurement List.

After consideration of the material
 presented to it concerning capability of
 qualified nonprofit agencies to provide
 the product(s) and service(s) and impact

of the additions on the current or most
 recent contractors, the Committee has
 determined that the product(s) and
 service(s) 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
 product(s) and service(s) to the
 Government.

2. The action will result in
 authorizing small entities to furnish the
 product(s) and service(s) 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 product(s) and
 service(s) proposed for addition to the
 Procurement List.

End of Certification

Accordingly, the following product(s)
 and service(s) are added to the
 Procurement List:

Product(s)

NSN(s)—Product Name(s):

5180-01-563-6719—Kit, Urban Operation
 Tools, Squad

5180-01-631-3029—Kit, Urban Operations
 Tools, Platoon

Mandatory Source of Supply: Wiscraft, Inc.,
 Milwaukee, WI

Mandatory for: 100% of the requirement of
 the U.S. Army

Contracting Activity: DEPT OF THE ARMY,
 W4GG HQ US ARMY TACOM

Service(s)

Service Type: Mailroom Operation

Mandatory for: US Air Force, Official Mail
 Center, Cannon AFB, Cannon AFB NM

Mandatory Source of Supply: ENMRSH, Inc.,
 Clovis, NM

Contracting Activity: DEPT OF THE AIR
 FORCE, FA4855 27 SOCONS LGC

Deletions

On 11/9/2018 (83 FR 218), 11/30/2018
 (83 FR 231), 12/14/2018 (83 FR 240),
 and 12/21/20 (83 FR 245), the
 Committee for Purchase From People
 Who Are Blind or Severely Disabled
 published notices of proposed deletions
 from the Procurement List.

After consideration of the relevant
 matter presented, the Committee has
 determined that the service(s) 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 provide the
 service(s) 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 service(s) deleted
 from the Procurement List.

End of Certification

Accordingly, the following service(s)
 are deleted from the Procurement List:

Service(s)

Service Type: Janitorial/Custodial

Mandatory for: U.S. Army Reserve Center:
 5200 Wissahickon Avenue Philadelphia,
 PA

Mandatory Source of Supply: The Chimes,
 Inc., Baltimore, MD

Contracting Activity: DEPT OF THE ARMY,
 W40M NORTHERREGION CONTRACT
 OFC

Service Type: Supply Room/Motor Vehicle
 Service

Mandatory for: Federal Aviation
 Administration: Great Lakes Region Des
 Plaines, IL

Mandatory Source of Supply: Jewish
 Vocational Service and Employment
 Center, Chicago, IL

Contracting Activity: TRANSPORTATION,
 DEPARTMENT OF

Service Type: Janitorial Service

Mandatory for: USDA Natural Resources
 Conservation Service, Shiprock Field
 Office, Old P.O. Rte. 491, Shiprock, NM

Mandatory Source of Supply: Presbyterian
 Medical Services, Santa Fe, NM

Contracting Activity: NATURAL
 RESOURCES CONSERVATION
 SERVICE, AZ STATE OFFICE (NRCS)

Service Types: Trash Pick-up
 Cleaning Services

Mandatory for: Crane Division, Naval Surface
 Warfare Center, Crane, IN

Mandatory Source of Supply: Orange County
 Rehabilitative and Developmental
 Services, Inc., Paoli, IN

Contracting Activity: DEPT OF THE NAVY,
 U S FLEET FORCES COMMAND

Service Type: Janitorial/Custodial

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
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: Custodial and Grounds
Maintenance Services
Mandatory for: FSS Depot, 400 Edwards
Avenue, Harahan, LA
Mandatory Source of Supply: Louisiana
Industries for the Disabled, Inc., Baton
Rouge, LA
Contracting Activity: PUBLIC BUILDINGS
SERVICE, BUILDING SERVICES TEAM
Service Type: Janitorial/Custodial
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
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: US Army Medical Command,
Health Care Acquisition Activity, Small
Business Office, 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
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

Patricia Briscoe,

*Deputy Director, Business Operations (Pricing
and Information Management).*

[FR Doc. 2019-02509 Filed 2-14-19; 8:45 am]

BILLING CODE 6353-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Technology Advisory Committee**

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures
Trading Commission (CFTC) announces
that on March 27, 2019, from 10:00 a.m.
to 3:30 p.m., the Technology Advisory
Committee (TAC) will hold a public
meeting in the Conference Center at the
Commodity Futures Trading
Commission's headquarters in
Washington, DC. At this meeting, the
TAC will hear presentations and
actionable recommendations from the
TAC subcommittees on Automated and
Modern Trading Markets, Distributed
Ledger Technology and Market
Infrastructure, Virtual Currencies, and
Cyber Security; and hear about research
findings on automated orders in the
futures and options markets from the
CFTC's Division of Market Oversight.

DATES: The meeting will be held on
March 27, 2019, from 10:00 a.m. to 3:30
p.m. Members of the public who wish
to submit written statements in
connection with the meeting should
submit them by April 3, 2019.

ADDRESSES: The meeting will take place
in the Conference Center at the CFTC's
headquarters, Three Lafayette Centre,
1155 21st Street NW, Washington, DC
20581. You may submit public
comments, identified by "Technology
Advisory Committee," by any of the
following methods:

- *CFTC website:* [http://
comments.cftc.gov](http://comments.cftc.gov). Follow the
instructions for submitting comments
through the Comments Online process
on the website.

- *Mail:* Christopher Kirkpatrick,
Secretary of the Commission,
Commodity Futures Trading
Commission, Three Lafayette Center,
1155 21st Street NW, Washington, DC
20581.

- *Hand Delivery/Courier:* Same as
Mail, above.

Any statements submitted in
connection with the committee meeting
will be made available to the public,
including publication on the CFTC
website, <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:
Daniel Gorfine, TAC Designated Federal
Officer, Commodity Futures Trading
Commission, Three Lafayette Centre,
1155 21st Street NW, Washington, DC
20581; (202) 418-5625.

SUPPLEMENTARY INFORMATION: The
meeting will be open to the public with

seating on a first-come, first-served
basis. Members of the public may also
listen to the meeting by telephone by
calling a domestic toll-free telephone or
international toll or toll-free number to
connect to a live, listen-only audio feed.
Call-in participants should be prepared
to provide their first name, last name,
and affiliation.

- *Domestic Toll Free:* 1-877-951-
7311.

- *International Toll and Toll Free:*
Will be posted on the CFTC's website,
<http://www.cftc.gov>, on the page for the
meeting, under Related Links.

- *Pass Code/Pin Code:* 7387894.

The meeting agenda may change to
accommodate other TAC priorities. For
agenda updates, please visit the TAC
committee website at: [http://
www.cftc.gov/About/CFTCCommittees/
TechnologyAdvisory/tac_meetings](http://www.cftc.gov/About/CFTCCommittees/TechnologyAdvisory/tac_meetings).

After the meeting, a transcript of the
meeting will be published through a
link on the CFTC's website at: [http://
www.cftc.gov](http://www.cftc.gov). All written submissions
provided to the CFTC in any form will
also be published on the CFTC's
website. Persons requiring special
accommodations to attend the meeting
because of a disability should notify the
contact person above.

(Authority: 5 U.S.C. app. 2 § 10(a)(2))

Dated: February 12, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019-02494 Filed 2-14-19; 8:45 am]

BILLING CODE 6351-01-P

**COMMODITY FUTURES TRADING
COMMISSION****Agricultural Advisory Committee**

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures
Trading Commission (CFTC or
Commission) is requesting nominations
for membership on the Agricultural
Advisory Committee (AAC or
Committee) and also inviting the
submission of potential topics for
discussion at future Committee
meetings. The AAC is a discretionary
advisory committee established by the
Commission in accordance with the
Federal Advisory Committee Act
(FACA).

DATES: The deadline for the submission
of nominations and topics is March 1,
2019.

ADDRESSES: Nominations and topics for
discussion at future AAC meetings
should be emailed to aac@cftc.gov or

sent by hand delivery or courier to Charlie Thornton, AAC Designated Federal Officer and Director of Legislative Affairs, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Please use the title "Agricultural Advisory Committee" for any nominations or topics you submit.

FOR FURTHER INFORMATION CONTACT: Charlie Thornton, AAC Designated Federal Officer and Director of Legislative Affairs, at (202) 418-5145 or email: aac@cftc.gov.

SUPPLEMENTARY INFORMATION: The AAC was established to assist the Commission in assessing issues affecting agricultural producers, processors, lenders, and others interested in or affected by the agricultural commodity derivatives markets through public meetings and Committee reports and recommendations. The duties of the AAC are solely advisory and include calling for reports and/or recommendations by the AAC or AAC subcommittee(s), adopting reports and/or recommendations, transmitting reports to the Commission, and making recommendations to the Commission. Determinations of actions to be taken and policy to be expressed with respect to the reports and/or recommendations of the AAC shall be made solely by the Commission.

Historically, the AAC has differed from the CFTC's other federal advisory committees in that it has consisted of member organizations appointed by the Commission who, in turn, nominate individuals to serve as representatives on the Committee. With this release, the CFTC would like to open up the AAC member identification process so that all interested individuals, firms, or organizations have the opportunity to express interest in serving on the AAC. In so doing, the membership structure of the AAC would become consistent with the Commission's other FACA committees.

Historically, the AAC has had between 30-40 members representing the following viewpoint categories: (i) Agricultural producers and/or direct and indirect users/consumers of agricultural products; (ii) providers of agricultural credit; (iii) other major market participants, including derivatives intermediaries, buy-side representatives and exchanges; (iv) regulators or representatives from other relevant government agencies; and (v) academia or public interest groups. The AAC has held approximately one

meeting per year. AAC members serve at the pleasure of the Commission. In addition, AAC members do not receive compensation or honoraria for their services, and they are not reimbursed for travel and per diem expenses.

AAC members primarily serve as representatives and provide advice reflecting the views of organizations that constitute the structure of the agricultural derivatives markets. The particular members will be chosen to individually and collectively represent the perspectives of those affected by Commission regulatory activities in the agricultural field, to serve as a vehicle for communication between the Commission and major agricultural and agriculture-related interests, and to air issues of mutual concern to the Commission and such interests. Depending on the issues faced, the Commission may, from time to time, appoint experts to serve as Special Government Employees (SGEs), or officials of other Federal agencies to serve, on the AAC. If nominated, SGEs will be asked to submit and complete a Confidential Financial Disclosure Report (OGE Form 450). The AAC may also include regular government employees when doing so furthers purposes of the AAC.

The Commission seeks to identify individuals who represent organizations that reflect a balanced and representative sample of agricultural producers, processors, lenders, regulators, and others interested in or affected by the agricultural commodity, futures, and swaps markets. To advise the Commission effectively, the AAC requires members with deep expertise and experience in the following areas: Risk management and hedging practices using futures, options, swaps, and other derivatives; trade execution associated with such practices; and the legal and regulatory regimes that govern hedging and risk management. Producers, end users, and agribusiness and industry trade associations are among the primary sources of these forms of knowledge and experience, and these organizations should be represented by individuals that share in this expertise and can represent their interests in a way that helps the Commission to understand and resolve highly technical issues. The Commission seeks to appoint individuals from different viewpoints of market participants, some of whom may have conflicting interests for the purpose of obtaining diverse perspectives on contested issues and expert operational knowledge. To the extent practicable, the Commission will strive to select members reflecting wide

ethnic, racial, gender, and age representation. AAC members should be open to participating in a public forum. The Commission invites the submission of nominations for AAC membership. Each nomination submission should include relevant information about the proposed member, such as the individual's name, title, and organizational affiliation, as well as information that supports the individual's qualifications to serve on the AAC representing one of the viewpoint categories listed above as well as the name and email or mailing address of the person or entity nominating the proposed member. The submission may also include suggestions for topics for discussion at future AAC meetings.

Submission of a nomination is not a guarantee of selection as a member of the AAC. As noted in the AAC's Membership Balance Plan, the CFTC identifies members for the AAC based on Commissioners' and Commission staff professional knowledge of the agricultural derivatives markets, consultation with knowledgeable persons outside the CFTC, and requests to be represented received from organizations. The office of the Commissioner primarily responsible for the AAC plays a primary, but not exclusive, role in this process and makes recommendations regarding membership to the Commission. The Commission, by vote, authorizes the proposed members to serve on the AAC.

The Commission also invites submissions from the public regarding the topics on which the AAC should focus. In other words, topics that:

- Reflect matters of public concern to agricultural derivatives markets, such as contract design, hedging effectiveness, price discovery, customer protection, the role of intermediaries, exchange rules; and/or
- are important to otherwise assist the Commission in identifying and understanding the impact and implications of the evolving market structure of the agricultural derivatives markets.

Each topic submission should include the commenter's name and email or mailing address.

(Authority: 5 U.S.C. App. II)

Dated: February 12, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019-02506 Filed 2-14-19; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID: USAF-2018-HQ-0011]

**Submission for OMB Review;
Comment Request****AGENCY:** Department of the Air Force, DoD.**ACTION:** 30-Day information collection notice.**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.**DATES:** Consideration will be given to all comments received by March 18, 2019.**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at aira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571-372-0493, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.**SUPPLEMENTARY INFORMATION:***Title; Associated Form; and OMB Number:* Tender of Service for Personal Property Household Goods and Unaccompanied Baggage Shipments, DD Form 619; OMB Control Number 0704-0531.*Type of Request:* Extension.
Number of Respondents: 876.
Responses per Respondent: 260.
Annual Responses: 227,760.
Average Burden per Response: 5 minutes.*Annual Burden Hours:* 18,980.
Needs and Uses: The information collection requirement is necessary to private sector commercial Transportation Service Providers, who are under contract with the DOD for shipment/storage of personal property, to identify ownership, schedule pickup and delivery of personal property, to include privately owned vehicles, motorcycles, and house trailers/motor homes, Bill of Lading for services rendered, personal property counseling checklist.

To U.S. Customs and Border Protection Declaration for personal property shipments, re-weigh of personal property, shipment evaluation and inspection reports, receipt for unaccompanied baggage, mobile home inspection record, temporary commercial storage at Government

expense, accessorial services-mobile home, report of contractor services, and claims for loss and damage.

To manifest individuals and personal property being transported in the DTS.

To provide emergency contact information to the designated authorized carrier under DoD contract and DoD authorizing activity, emergency contact information in the event of an emergency.

To disclose information to other Federal agencies in order to manage an optimize DoD transportation resources, and to provide customs, immigration, and transportation security screening.

To the designated authorized carrier under DoD contract and DoD authorizing activity, emergency contact information in the event of an emergency.

To the Department of State to locate individuals in the DTS. To General Service Administration and Defense Government Accounting Activities for processing government Bills of Lading, and post-payment audits as required.

Affected Public: Business or other for-profit.*Frequency:* On occasion.*Respondent's Obligation:* Voluntary.*OMB Desk Officer:* Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.*DOD Clearance Officer:* Mr. Frederick Licari.Requests for copies of the information collection proposal should be sent to Mr. Licari at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: February 11, 2019.

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

[FR Doc. 2019-02448 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-05-P**DEPARTMENT OF DEFENSE****Office of the Secretary**

[Docket ID: DoD-2018-OS-0095]

**Submission for OMB Review;
Comment Request****AGENCY:** Office of the Secretary of Defense, DoD.**ACTION:** 30-Day information collection notice.**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.**DATES:** Consideration will be given to all comments received by March 18, 2019.**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at aira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571-372-0493, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.**SUPPLEMENTARY INFORMATION:***Title; Associated Form; and OMB Number:* Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; OMB Control Number 0704-0553.*Type of Request:* Extension.
Number of Respondents: 300,000.
Responses per Respondent: 1.
Annual Responses: 300,000.
Average Burden per Response: 10 minutes.*Annual Burden Hours:* 50,000.
Needs and Uses: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and

actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which

generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse

bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: February 11, 2019.

Shelly E. Finke,

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

[FR Doc. 2019-02451 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Science Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Thursday, February 21, 2019 from 8:00 a.m. to 2:00 p.m.

ADDRESSES: The address of the closed meeting is the Nunn-Lugar Conference Room, 3E863 at the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Lt Col Milo W. Hyde, III, U.S. Air Force, (703)571-0081 (Voice), (703) 697-1860 (Facsimile), milo.w.hyde2.mil@mail.mil (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140. Website: <http://www.acq.osd.mil/dsb/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to the circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102-3.150(a) concerning the meeting on February 21, 2019 of the Defense Science Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C), Appendix), the Government in the Sunshine Act (Title 5 U.S.C., Section 552b), and Title 41 Code of Federal Regulations (CFR), Sections 102-3.140 and 102-3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet with DoD Leadership to

discuss classified current and future national security challenges within the DoD.

Agenda: The DSB Winter Quarterly Meeting will begin on February 21, 2019 at 8:00 a.m. with opening remarks by Lt Col Milo Hyde, the Designated Federal Officer, and Dr. Craig Fields, DSB Chairman. The first presentation will be from Dr. Arup Chakraborty and Dr. George Whitesides, Co-Chairs of the DSB Task Force on Biology, who will provide a brief on the Task Force on Biology's findings and recommendations and engage in classified discussion with the DSB. The DSB will then vote on the Biology Task Force's findings and recommendations. Next, Honorable John C. Rood, Under Secretary of Defense for Policy, will provide a classified brief on his view of current and future defense challenges. Next, Admiral John M. Richardson, Chief of Naval Operations, will provide a classified brief on his view of the defense issues and challenges the Navy faces. Finally, Honorable Robert F. Behler, Director of Operational Test and Evaluation will provide a classified brief on his view of current and future defense challenges. The meeting will adjourn at 2:00 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and Title 41 CFR, Section 102-3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by title 5 U.S.C., section 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with Section 10(a)(3) of the FACA and Title 41 CFR, Sections 102-3.105(j) and 102-3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to

the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided above at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: February 11, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-02371 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Innovation Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board, Science and Technology Subcommittee will take place.

DATES: Open to the public Thursday, March 14, 2019 from 1:30 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Studio Theater, Cohon University Center, First Floor, Carnegie Mellon University, 5032 Forbes Ave., Pittsburgh, PA 15213. The public subcommittee meeting will be live streamed for those who are unable to physically attend the meeting.

FOR FURTHER INFORMATION CONTACT: Michael L. Gable, (571) 372-0933 (Voice), (Facsimile), michael.l.gable.civ@mail.mil (Email). Mailing address is Defense Innovation Board, 3030 Defense Pentagon, Room 5E572, Washington, DC 20301-3030. Website: <http://innovation.defense.gov>. The most up-to-date changes to the meeting agenda can be found on the website.

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 Department of Defense (DoD) is publishing this notice to announce that the following federal advisory committee meeting of the Science and Technology Subcommittee of Defense Innovation Board (DIB) will take place.

Agenda: During meeting, members of the public will have an opportunity to provide oral comments to the DIB regarding its ongoing research and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102-3.140 through 102-3.165) and the availability of space, the meeting is open to the public 1:30 p.m. to 4:00 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should register on the DIB website, <http://innovation.defense.gov>, no later than March 12, 2019. Members of the media should RSVP to Lieutenant Colonel Michelle Baldanza, U.S. Army, Office of the Secretary of Defense Public Affairs, at michelle.l.baldanza.mil@mail.mil.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Designated Federal Officer (DFO), see **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than March 10, 2019, so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB's mission. Individuals submitting a written statement must submit their statement to the DFO (see **FOR FURTHER INFORMATION CONTACT** section for contact information). Written comments that do not pertain to a scheduled meeting may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then such comments must be received in writing not later than March 12, 2018. The DFO will compile all written submissions and provide them to DIB members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the public meeting may be permitted to speak for up to five minutes. Anyone wishing to speak to the DIB should submit a request by

email at osd.innovation@mail.mil not later than March 12, 2019 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: February 12, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-02540 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Innovation Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board, Science and Technology Subcommittee will take place.

DATES: Open to the public Thursday, April 25, 2019 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at Stanford Institute for Economic Policy Research, John A. and Cynthia Fry Gunn Building, 366 Galvez Street, Stanford, CA 94305. The public subcommittee meeting will be live streamed for those who are unable to physically attend the meeting.

FOR FURTHER INFORMATION CONTACT:

Michael L. Gable, (571) 372-0933 (Voice), (Facsimile), michael.l.gable.civ@mail.mil (Email). Mailing address is Defense Innovation Board, 3030 Defense Pentagon, Room 5E572, Washington, DC 20301-3030. Website: <http://innovation.defense.gov>. The most up-to-date changes to the meeting agenda can be found on the website.

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 Department of Defense (DoD) is publishing this notice to announce that the following federal advisory committee meeting of the Science and Technology Subcommittee of the Defense Innovation Board (DIB) will take place.

Agenda: During meeting, members of the public will have an opportunity to provide oral comments to the DIB regarding its ongoing research and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102-3.140 through 102-3.165) and the availability of space, the meeting is open to the public from 1:30 p.m. to 4:30 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should register on the DIB website, <http://innovation.defense.gov>, no later than April 23, 2019. Members of the media should RSVP to Lieutenant Colonel Michelle Baldanza, U.S. Army, Office of the Secretary of Defense Public Affairs, at michelle.l.baldanza@mail.mil.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Designated Federal Officer (DFO), see **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than April 21, 2019, so that appropriate arrangements can be made.

Written Statements: Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB's mission. Individuals submitting a written statement must submit their statement to the DFO (see **FOR FURTHER INFORMATION CONTACT** section for contact information). Written comments that do not pertain to a scheduled meeting may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then such comments must be received in writing not later than April 23, 2018. The DFO will compile all written submissions and provide them to DIB members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the

DIB at the public meeting may be permitted to speak for up to five minutes. Anyone wishing to speak to the DIB should submit a request by email at osd.innovation@mail.mil not later than April 23, 2019 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: February 12, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-02537 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Defense Innovation Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board will take place.

DATES: Open to the public Thursday, March 21, 2019 from 9:30 a.m. to 12:30 p.m. (Escort is required for attendees who do not have Pentagon credentials. See guidance in the **SUPPLEMENTARY INFORMATION** section.)

ADDRESSES: The meeting will be held at the Pentagon, Arlington, Virginia. The public meeting will be live streamed for those who are unable to physically attend the meeting. (Escort is required for attendees who do not have Pentagon credentials. See guidance in the **SUPPLEMENTARY INFORMATION** section.)

FOR FURTHER INFORMATION CONTACT:

Michael L. Gable, (571) 372-0933 (Voice), (Facsimile), michael.l.gable.civ@mail.mil (Email). Mailing address is Defense Innovation Board, 3030 Defense Pentagon, Room 5E572, Washington, DC 20301-3030. Website: <http://innovation.defense.gov>.

The most up-to-date changes to the meeting agenda can be found on the website.

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 mission of the DIB is to examine and provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and processes, business and functional concepts, and technology applications. The DIB focuses on (a) technology and capabilities, (b) practices and operations, and (c) people and culture.

Agenda: During the meeting, the DIB will receive a presentation from the Under Secretary of Defense for Research and Engineering. The Science and Technology subcommittee will discuss their work on principles for the ethical use of Artificial Intelligence and their study on the viability of 5G capability for DoD. The Workforce Behavior and Culture subcommittee will discuss career paths and their work plan for calendar year 2019. The DIB will also receive a progress update on the Software Acquisition and Practices (SWAP) study directed in the National Defense Authorization Act for Fiscal Year 2018 (“the FY18 NDAA”) and deliberate on the working draft of the study. Additionally, Mr. Joshua Marcuse, on behalf of DoD, will brief the DIB on DoD’s latest implementation activities related to DIB recommendations. Members of the public will have an opportunity to provide oral comments to the DIB regarding its deliberations and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 9:30 a.m. to 12:30 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should register on the DIB website, <http://innovation.defense.gov>, no later than March 18, 2019. Members of the media should RSVP to Lieutenant Colonel Michelle Baldanza, U.S. Army, Office of

the Secretary of Defense Public Affairs, at michelle.l.baldanza.mil@mail.mil. Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Designated Federal Officer (DFO), see **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than March 7, 2019, so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB’s mission. Individuals submitting a written statement must submit their statement to the DFO (see **FOR FURTHER INFORMATION CONTACT** section for contact information). Written comments that do not pertain to a scheduled meeting may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then such comments must be received in writing not later than March 18, 2019. The DFO will compile all written submissions and provide them to DIB members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the public meeting may be permitted to speak for up to two minutes. Anyone wishing to speak to the DIB should submit a request by email at osd.innovation@mail.mil not later than March 18, 2019 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: February 12, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–02546 Filed 2–14–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–OS–0078]

Submission for OMB Review; Comment Request

AGENCY: Defense Media Activity, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 18, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at oir_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: American Forces Network Connect (AFNC); OMB Control Number 0704–0547.

Type of Request: Extension.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 1,667.

Needs and Uses: The information collection requirement is necessary to obtain and audit the eligibility of DoD Employees, DoD contractors, Department of State (DoS) employees, military personnel (including retirees and active reservists) and their Family members overseas to receive restricted American Forces Radio and Television Service (AFRTS) programming services (*i.e.*, radio, television, and web streaming services). Demographic data will also be collected to ensure the Defense Media Activity (DMA) provides its services in the most efficient and cost effective manner.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent’s Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: February 11, 2019.

Shelly E. Finke,

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

[FR Doc. 2019-02447 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Reserve Forces Policy Board, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: The RFPB will hold a meeting on Wednesday, March 6, 2019 from 8:55 a.m. to 3:25 p.m. The portion of the meeting from 8:55 a.m. to 2:30 p.m. will be closed to the public. The portion of the meeting from 2:40 p.m. to 3:25 p.m. will be open to the public.

ADDRESSES: The RFPB meeting address is the Pentagon, Room 3E863, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Alexander Sabol, (703) 681-0577 (Voice), 703-681-0002 (Facsimile), Alexander.J.Sabol.Civ@Mail.Mil (Email). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Website: <http://rfpb.defense.gov/>. The most up-to-date changes to the meeting agenda can be found on the website and the **Federal Register**.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.,

Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a meeting from 8:55 a.m. to 3:25 p.m. The portion of the meeting from 8:55 a.m. to 2:30 p.m. will be closed to the public and will consist of remarks to the RFPB from following invited speakers: The Under Secretary of the Navy will discuss the Navy's posture and challenges facing our Nation and priorities for adapting the Naval force and the Navy Reserve's potential use; the Director of Joint Intelligence, National Guard Bureau will discuss the role of the Reserve Components in the Space Force, the Department of Defense's proposed legislative language of the Space Force addressing the warfare domain definition, required skill sets, and the integration of Reserve Components into the Space Force; the Principal Deputy Assistant Secretary of Defense for Readiness will discuss Reserve Component Equipping and Transparency, Active and Reserve Components' readiness initiatives, their equipment parity, and the Department's approach to budgeting Reserve equipment in the Defense Budget; the Deputy Director, Defense Health Agency will brief the Defense Health Agency Military Health System transformation, its policies and practices in providing worldwide military medical, dental, and pharmacy services including the TRICARE Health Plan, and the challenges in supporting the Reserve Components; and the Assistant Secretary of Defense for Manpower and Reserve Affairs, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness will discuss the Under Secretary of Defense for Personnel and Readiness' goals and updates on Reserve Component personnel system reforms under consideration and review of the Assistant Secretary of Defense for Reserve Affairs reorganization issues. The portion of the meeting from 2:40 p.m. to 3:25 p.m. will be open to the public and will consist of briefings from the following: The Subcommittee on Ensuring a Ready, Capable, Available and Sustainable Operational Reserve will brief the Reserve Component Cost Analysis findings and recommendations on the initial review of Active Component and Reserve Component

cost, force mix, and future strategies for Reserve Component use given the national security challenges in a constrained fiscal environment.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102-3.140 through 102-3.165, and subject to the availability of space, the meeting is open to the public from 2:40 p.m. to 3:25 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Tuesday, March 5, 2019, as listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance at 2:00 p.m. to provide sufficient time to complete security screening to attend the beginning of the Open Meeting at 2:40 p.m. on March 6th. To complete the security screening, please be prepared to present two forms of identification. One must be a picture identification card. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c), and 41 CFR 102-3.155, the DoD has determined that the portion of this meeting scheduled to occur from 8:55 a.m. to 2:30 p.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), in coordination with the Department of Defense FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.105(j) and 102-3.140, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will

be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's website.

Dated: February 12, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-02538 Filed 2-14-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Patuxent River Complex Testing and Training and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality, the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) for Research, Development, Test and Evaluation (hereinafter referred to as "testing") and training activities within the Patuxent River Complex (PRC), Naval Air Station Patuxent River, MD. The proposed action is to continue conducting military testing and training activities within the PRC to meet current and projected military readiness requirements. The proposed action includes testing and training activities analyzed in the Naval Air Systems Command, Naval Air Warfare Center Aircraft Division (NAWCAD) December 1998 PRC Final EIS and subsequent Environmental Assessments, plus adjustments to current testing and training activities required to support projected Navy military readiness requirements into the foreseeable future.

DATES: The 45-day public scoping comment period begins February 15, 2019 and ends April 1, 2019. Public scoping meetings will be held on March 4, 5, 6 and 7, 2019. All public comments are due by April 1, 2019.

ADDRESSES: The meetings will be held at the following locations:

1. March 4, 2019, 4:00 p.m. to 7:00 p.m., Light of Christ Anglican Church, 9500 Northumberland Highway, Heathsville, VA 22473-0609.

2. March 5, 2019, 4:00 p.m. to 7:00 p.m., Southern Maryland Higher Education Center, Building 1 Multi-

Purpose Room, 44219 Airport Road, California, MD 20619-2010.

3. March 6, 2019, 4:00 p.m. to 7:00 p.m., University of Maryland, Eastern Shore, Richard A. Henson Center Ballroom, 30690 University Blvd. S, Princess Anne, MD 21853-1295.

4. March 7, 2019, 4:00 p.m. to 7:00 p.m., St. Paul's United Methodist Church, Parish Hall, 205 Maryland Avenue, Cambridge, MD 21613-1924.

The Navy invites public comments on the scope of the analysis, including potential environmental issues and viable alternatives to be considered during the development of the Draft EIS. Comments may be provided at the public scoping meetings, by mail, and through the EIS website at: <http://www.prceis.com>. Comments must be postmarked or received online by April 1, 2019. Mailed comments must be sent to the address in the **FOR FURTHER INFORMATION CONTACT** section for consideration in the Draft EIS preparation.

The scoping meetings will consist of informal, open house sessions with informational poster stations staffed by Navy representatives. Meeting details will be announced in local area newspapers. Additional information on the public scoping meetings will be available on the EIS website at: <http://www.prceis.com>.

FOR FURTHER INFORMATION CONTACT: Naval Air Warfare Center Aircraft Division Range Sustainability Office, Atlantic Test Range, Building 2118, 23013 Cedar Point Road, Patuxent River, MD 20670-1183, Attn: Ms. Crystal Ridgell, EIS Project Manager, 301-342-9902 or project website: <http://www.prceis.com>.

SUPPLEMENTARY INFORMATION: NAWCAD is the Navy's action proponent for activities in the PRC, and is based at Naval Air Station (NAS) Patuxent River, Maryland approximately 60 miles southeast of Washington, DC. The PRC is a Major Range and Test Facility Base with the mission of testing Navy and Marine Corps aircraft, aircraft systems, and inert weapons in the military restricted and surrounding airspace that overlies the middle Chesapeake Bay water range, the southern end of the Potomac and Patuxent Rivers, as well as lands in Maryland, Virginia, and Delaware. The PRC is critical to supporting NAWCAD's mission to deliver high quality, affordable aircraft products and services in support of Navy and Marine Corps military readiness. Navy pilots also conduct training flights within the PRC.

The proposed action is to continue conducting military testing and training activities within the PRC to meet current and projected military readiness requirements. The proposed action includes testing and training activities analyzed in the 1998 PRC Final EIS and subsequent environmental assessments, as well as adjustments to current testing and training activities to support projected Navy readiness requirements into the foreseeable future.

The purpose of the proposed action is to provide Sailors and Marines with equipment and technology that operates effectively and safely to support current and projected future military readiness requirements.

The need for the proposed action is to maintain military readiness of naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas, now and into the future, consistent with Title 10, Section 5062, of the United States Code.

The Navy will evaluate the potential environmental impacts from a No Action Alternative and action alternatives, and will analyze potential impacts on environmental resources from activities included in the alternatives. These environmental resources include, but are not limited to: Biological resources (e.g., aquatic and terrestrial protected species); water resources and sediments; air quality; airborne noise; cultural resources; socioeconomics; land use; public health and safety; hazardous material and waste; and environmental justice.

The scoping process is helpful in identifying public concerns and local issues to be considered during the development of the Draft EIS. Federal, state, and local agencies; federally recognized tribes; and interested persons are encouraged to provide substantive comments to the Navy on environmental resources and issue areas of concern that the commenter believes the Navy should consider. All comments, provided orally or in writing at the scoping meetings, submitted via the EIS website, or mailed, will be taken into consideration during the development of the Draft EIS.

Dated: February 15, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019-02325 Filed 2-14-19; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0131]

Progress in International Reading Literacy Study (PIRLS 2021) Field Test Recruitment; ED–2018–ICCD–0131; Correction

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Correction Notice.

SUMMARY: On February 12, 2019, the U.S. Department of Education published a 60-day comment period notice in the **Federal Register** with FR DOC# 2019–01954 seeking public comment for an information collection entitled, “Progress in International Reading Literacy Study (PIRLS 2021) Field Test Recruitment”. The comment period is 30 Days instead of 60 Days, and interested persons are invited to submit comments on or before March 14, 2019.

The PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 2019, in FR Doc 2019–01954, on page 3424, in the second column, correct the **DATES** caption to read:

DATES: Interested persons are invited to submit comments on or before March 14, 2019.

Dated: February 12, 2019.

Stephanie Valentine,
PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–02484 Filed 2–14–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decisions Under the Randolph-Sheppard Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: This notice lists arbitration panel decisions under the Randolph-Sheppard Act issued in April, May, and June 2018. This notice also lists any older decisions that the Department has made publicly available in accessible electronic format during that period. All decisions are available on the Department’s website and by request.

FOR FURTHER INFORMATION CONTACT: Donald Brinson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5065D, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7310. Email: donald.brinson@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: For the purpose of providing individuals who are blind with remunerative employment, enlarging their economic

opportunities, and stimulating greater efforts to make themselves self-supporting, the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* (Act), authorizes individuals who are blind to operate vending facilities on Federal property and provides them with a priority for doing so. The vending facilities include, among other things, cafeterias, snack bars, and automatic vending machines. The Department administers the Act and designates an agency in each State—the State Licensing Agency (SLA)—to license individuals who are blind to operate vending facilities on Federal and other property in the State.

The Act requires arbitration of disputes between SLAs and vendors who are blind and between SLAs and Federal agencies before three-person panels convened by the Department whose decisions constitute final agency action. 20 U.S.C. 107d–1. The Act also makes these decisions matters of public record and requires their publication in the **Federal Register**. 20 U.S.C. 107d–2(c).

On September 5, 2017, the Department announced that it would publish quarterly lists of Randolph-Sheppard arbitration panel decisions in the **Federal Register** and that the full text of the decisions listed would be available on the Department’s website or by request (see 82 FR 41941). In that notice, we also announced that we would add older, archived decisions as they become available.

In the second quarter of 2018, a Randolph-Sheppard arbitration panel issued the following decision.

Case name	Docket No.	Date	State
<i>New Jersey Commission for the Blind and Visually Impaired v. Department of the Air Force, Joint Base McGuire-Dix-Lakehurst.</i>	R–S/15–19	4/24/2018	New Jersey.

This decision and other decisions that we have already posted are searchable by key terms, are accessible under Section 508 of the Rehabilitation Act, and are available in Portable Document

Format (PDF) at www.ed.gov/programs/rsarsp/arbitration-decisions.html or by request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

At the same site, we have posted the following older, archived decision from 2013.

Case name	Docket No.	Date	State
<i>State of California, Department of Rehabilitation v. United States General Services Administration.</i>	R–S/10–07	5/15/13	California.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotope, or compact disc) on request to the contact 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. 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 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. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 11, 2019.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019-02386 Filed 2-14-19; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2018-ICCD-0100]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Case Service Report (RSA-911)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 15, 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-0100. 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 9089, Washington, DC 20202-0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melinda Giancola, 202-245-7312.

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: Case Service Report (RSA-911).

OMB Control Number: 1820-0508.

Type of Review: A revision of an existing information collection.

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

Total Estimated Number of Annual Responses: 78.

Total Estimated Number of Annual Burden Hours: 5,650.

Abstract: The RSA-911 is used to collect individual level data on Vocational Rehabilitation (VR) program participants on a quarterly basis. The data collected in this report are mandated by section 101(a)(10) and 607 of the Rehabilitation Act of 1973 (Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA) and section 116(d) of WIOA. In addition, RSA uses data reported through this data collection to support its other responsibilities under the Act. Section 14(a) of the Act calls for the evaluation of programs authorized under the Act, as well as an assessment of the programs' effectiveness in relation to cost. Many of these evaluation studies have utilized RSA-911 data. RSA also uses data captured through the RSA-911 during the conduct of both the annual review and periodic onsite

monitoring of VR agencies required by section 107 of the Act to examine the effectiveness of program performance.

Other important management activities, such as the provision of technical assistance, program planning, and budget preparation and development, are greatly enhanced through the use of RSA-911 data. In addition, RSA uses RSA-911 data in the exchange of data under a data sharing agreement with the Social Security Administration as required by section 131 of the Act. Finally, the RSA-911 is considered to be one of the most robust databases in describing the demographics of the disabled population in the country and as such is used widely in researchers' disability-related analyses and reports.

The revisions to this instrument include the removal of duplicative data elements as well as those not specifically required by statute or used for statutorily required activities. RSA is proposing to remove 66 elements from the current collection. RSA proposed the addition of 15 elements, 7 of which are related to adding a new service to track VR participant participation in Apprenticeships. RSA is also adding several elements by request of the VR agencies: Date of Initial IPE, Date of IPE Extension, and Date all Pre-Employment Transition Services Were Discontinued. These changes yield a net decrease in 251,000 burden hours in data collection and 1,488 burden hours in data reporting nationally.

Dated: February 11, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Office of the Chief Information Officer.

[FR Doc. 2019-02373 Filed 2-14-19; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19-53-000.

Applicants: Exelon Wind 4, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Exelon Wind 4, LLC under EC19-53.

Filed Date: 2/8/19.

Accession Number: 20190208-5099.

Comments Due: 5 p.m. ET 3/1/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1015–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–08_SA 2985 MidAmerican-MidAmerican 1st Rev GIA (J499) to be effective 1/25/2019.

Filed Date: 2/8/19.

Accession Number: 20190208–5027.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1016–000.

Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–08_SA 2963 MidAmerican-MidAmerican 1st Rev GIA (J498) to be effective 1/25/2019.

Filed Date: 2/8/19.

Accession Number: 20190208–5030.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1017–000.

Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–08_SA 3061 MidAmerican-MidAmerican 1st Rev GIA (J475 J555) to be effective 1/25/2019.

Filed Date: 2/8/19.

Accession Number: 20190208–5032.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1018–000.

Applicants: Lower Mount Bethel Energy, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 2/9/2019.

Filed Date: 2/8/19.

Accession Number: 20190208–5082.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1019–000.

Applicants: Central Maine Power Company.
Description: Tariff Cancellation: Notice of Termination of Small Generator Interconnection Agreement with Sparhawk to be effective 1/17/2019.

Filed Date: 2/8/19.

Accession Number: 20190208–5091.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19–1020–000.

Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Joint Use Pole Agreement with Northeast Missouri Electric Power Coop to be effective 5/19/2017.

Filed Date: 2/8/19.

Accession Number: 20190208–5092.

Comments Due: 5 p.m. ET 3/1/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 8, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02498 Filed 2–14–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1023–000]

Spruance Operating Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 11, 2019..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02505 Filed 2–14–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–997–000]

Pinetree Power LLC: Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2019.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link above. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-02503 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19-55-000.

Applicants: Long Ridge Energy

Generation LLC.

Description: Self-Certification of EG of Long Ridge Energy Generation LLC.

Filed Date: 2/8/19.

Accession Number: 20190208-5135.

Comments Due: 5 p.m. ET 3/1/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18-1481-002.

Applicants: Duke Energy Florida, LLC.

Description: Compliance filing: DEF Interchange Compliance Filing to be effective 1/1/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5117.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-356-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response—Require All VERs to Register and Convert to DVERs to be effective 1/16/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5098.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-601-001.

Applicants: AEP Energy Partners, Inc.

Description: Tariff Amendment: MBR Tariff, FERC Electric Tariff for Market Based Sales to be effective 3/1/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5000.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19-606-001.

Applicants: AEP Generation Resources Inc.

Description: Tariff Amendment: MBR Tariff, FERC Electric Tariff For Market-Based Sales to be effective 3/1/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5002.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19-936-001.

Applicants: New England Power Pool Participants Committee.

Description: Tariff Amendment: Feb 2019 Membership Filing (Corrected) to be effective 1/1/2019.

Filed Date: 2/8/19.

Accession Number: 20190208-5150.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19-1021-000.

Applicants: Appalachian Power Company.

Description: § 205(d) Rate Filing: OATT—Revise Attachment K, AEP Texas Inc. Rate Update to be effective 12/31/9998.

Filed Date: 2/8/19.

Accession Number: 20190208-5114.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19-1022-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised WMPA Service Agreement No. 2033; Queue No. N07 to be effective 1/12/2019.

Filed Date: 2/8/19.

Accession Number: 20190208-5125.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19-1023-000.

Applicants: Spruance Operating Services, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 3/25/2019.

Filed Date: 2/8/19.

Accession Number: 20190208-5136.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19-1024-000.

Applicants: AEP Generation Resources Inc.

Description: § 205(d) Rate Filing: MBR Tariff, FERC Electric Tariff For Market-Based Sales to be effective 3/1/2019.

Filed Date: 2/8/19.

Accession Number: 20190208-5151.

Comments Due: 5 p.m. ET 3/1/19.

Docket Numbers: ER19-1025-000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-02-11_SA 3239 Kossuth Wind-MidAmerican GIA (J534) to be effective 1/28/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5060.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-1026-000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-02-11_SA 3238 EDF Renewables-MidAmerican FCA (J495) to be effective 1/28/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5069.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-1027-000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019-02-11_SA 2988 MidAmerican-MidAmerican 2nd Rev GIA (J500) to be effective 1/28/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5073.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-1028-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1534R9 Kansas Municipal Energy Agency NITSA NOA to be effective 2/1/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5080.

Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: ER19-1029-000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: SPS-GSEC-SPEC-T-IA-Yuma-2-707-0.0.0 to be effective 4/13/2019.

Filed Date: 2/11/19.

Accession Number: 20190211-5094.

Comments Due: 5 p.m. ET 3/4/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 11, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-02499 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-987-000]

Crystal Lake Wind Energy I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link above. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 11, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-02502 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19-36-000.

Applicants: Bay Gas Storage Company, Ltd.

Description: Tariff filing per 284.123(b),(e)/: Bay Gas Storage Co., Ltd. 2019 Annual Adjustment to Company Use Percentage to be effective 3/1/2019.

Filed Date: 2/6/19.

Accession Number: 201902065085.

Comments/Protests Due: 5 p.m. ET 2/27/19.

Docket Numbers: RP19-641-000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: 2019 Cleanup to be effective 3/10/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5170.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-642-000.

Applicants: Dominion Energy Overthrust Pipeline, LLC.

Description: § 4(d) Rate Filing: 2019 Cleanup to be effective 3/10/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5172.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-643-000.

Applicants: White River Hub, LLC.

Description: § 4(d) Rate Filing:

Housekeeping to be effective 3/10/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5173.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-644-000.

Applicants: Questar Southern Trails Pipeline Company.

Description: § 4(d) Rate Filing: 2019

Housekeeping to be effective 3/10/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5174.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-645-000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2019-02-07 BHS (3) to be effective 2/7/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5175.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-646-000.

Applicants: Northern Border Pipeline Company.

Description: § 4(d) Rate Filing:

Correction to NBPL PAL Rate to be effective 2/1/2019.

Filed Date: 2/8/19.

Accession Number: 20190208-5046.

Comments Due: 5 p.m. ET 2/20/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 11, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-02501 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19-639-000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2019-02-06 Encana to be effective 2/6/2019.

Filed Date: 2/6/19.

Accession Number: 20190206-5094.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP18-1219-001.

Applicants: Northern Natural Gas Company.

Description: Progress Report and Petition for Waiver of Commission Regulations of Northern Natural Gas Company.

Filed Date: 2/7/19.

Accession Number: 20190207-5038.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19-640-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Feb2019 Negotiated Rates Cleanup Filing to be effective 3/7/2019.

Filed Date: 2/7/19.

Accession Number: 20190207-5007.

Comments Due: 5 p.m. ET 2/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 8, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-02500 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER19-1009-000]

Revere Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2019.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link above. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 11, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-02504 Filed 2-14-19; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9043-4]

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 02/04/2019 Through 02/08/2019 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. 20190006, Draft, HHS, WV, Acquisition of Site for Development of a Replacement Underground Safety Research Program Facility in Mace, West Virginia, Comment Period Ends: 04/05/2019, Contact: Sam Tarr 770-488-2408

EIS No. 20190007, Final, USCG, AK, Polar Security Cutter Acquisition Program Final Programmatic Environmental Impact Statement, Review Period Ends: 03/18/2019, Contact: Christine Wiegand 202-475-3742

EIS No. 20190008, Final, USFS, CBP, ID, Bog Creek Road Project, Review Period Ends: 04/02/2019, Contact: Joseph Zidron 949-643-6392

EIS No. 20190009, Final, USFS, ID, Little Boulder, Review Period Ends: 04/01/2019, Contact: Johanna Kovarik 208-476-8344

EIS No. 20190010, Final, USFS, CO, Crested Butte Mountain Resort Ski Area Projects, Review Period Ends: 04/01/2019, Contact: Aaron Drendel 970-641-0471

EIS No. 20190011, Draft, BLM, NV, Gemfield Mine Project, Comment Period Ends: 04/10/2019, Contact: Kevin Hurrell 775-635-4000

EIS No. 20190012, Final Supplement, GSA, CA, San Ysidro Land Port of

Entry Improvements Project, *Review Period Ends: 03/18/2019, Contact: Osmahn Kadri 415-522-3617*

EIS No. 20190013, Final, DOE, LA, ADOPTION—Port Arthur Liquefaction Project, Texas Connector Project, and Louisiana Connector Project, Contact: Brian Lavoie 202-586-2459

The Department of Energy (DOE) has adopted the Federal Energy Regulatory Commission's Final EIS No. 20190003, filed 01/31/2019 with the EPA. DOE 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. 20180302, Draft Supplement, NMFS, WA, 10 Salmon and Steelhead Hatchery Programs in the Duwamish-Green River Basin, Comment Period Ends: 03/01/2019, Contact: Allyson Purcell 503-736-4736. Revision to FR Notice Published 12/07/2018; NOAA has reopened the comment period to end on 03/01/2019.

EIS No. 20180303, Draft, BOEM, MA, Vineyard Wind Offshore Wind Energy Project, Comment Period Ends: 02/22/2019, Contact: Michelle Morin 703-787-1722. Revision to FR Notice Published 12/07/2018; Extending the Comment Period from 01/21/2019 to 02/22/2019.

EIS No. 20180328, Draft, CTDOH, CT, Resilient Bridgeport, Comment Period Ends: 03/18/2019, Contact: Rebecca French 860-270-8231. Revision to FR Notice Published 02/01/2019; Correction Lead Agency from HUD to CTDOH.

Dated: February 12, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019-02454 Filed 2-14-19; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Broadband Deployment Advisory Committee, GN 17-83

AGENCY: Federal Communications Commission.

ACTION: Notice of renewal of the Broadband Deployment Advisory Committee's charter.

SUMMARY: The Federal Communications Commission (Commission) hereby announces that the charter of the Broadband Deployment Advisory

Committee (hereinafter Committee) has been renewed pursuant to the Federal Advisory Committee Act (FACA).

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Designated Federal Officer, Federal Communications Commission, Wireline Competition Bureau, (202) 418-1550, or email: *Paul.DAri@fcc.gov*.

SUPPLEMENTARY INFORMATION: On February 4, 2019, the General Services Administration approved renewal of the charter of the Committee pursuant to provisions of the FACA. The Commission intends to renew the charter on or before March 1, 2019 and provide the Committee with authorization to operate for two years from the effective date.

The Committee provides recommendations to the Commission on how to accelerate the deployment of high-speed internet access, or "broadband," by reducing and/or removing regulatory barriers to infrastructure investment and strengthening existing broadband networks in communities across the country. This Committee provides an effective means for stakeholders with interests in this area to exchange ideas and develop recommendations to the Commission on broadband deployment, which will in turn enhance the Commission's ability to carry out its statutory responsibility to encourage broadband deployment to all Americans.

Issues to be considered by the Committee may include, but are not limited to, measures to prepare for, respond to, and recover from disasters that impact broadband networks; new ways of encouraging deployment of high-speed broadband infrastructure and services to low-income communities; and other ways to accelerate deployment of broadband infrastructure to all Americans and to close the digital divide.

The Committee is organized under, and operates in accordance with, the provisions of the FACA. The Committee will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Committee will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Committee will be conducted in an open, transparent, and accessible manner. The Committee shall terminate on March 1, 2021, or earlier upon the completion of its work as determined by the Chairman, unless its

charter is renewed prior to the termination date.

During the Committee's second term, it is anticipated that the Committee will meet in Washington, DC for at least three (3) one-day meetings. The first meeting date and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, as needed, working groups or subcommittees (ad hoc or steering) will be established to facilitate the Committee's work between meetings of the full Committee. All meetings, including those of working groups and subcommittees, will be fully accessible to individuals with disabilities.

Federal Communications Commission.

Pamela Arluk,

Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2019-02567 Filed 2-14-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change The Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before April 16, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202-418-2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: WE HAVE THIS HOPE CHRISTIAN RADIO, INC., Fac. ID No. 175404, KOLJ-FM, Channel 216C1, From WARROAD, MN, To WANNASKA, MN, BPED-20190108AAG; CENTRO FAMILIAR CRISTIANO, Fac. ID No. 164149, KLSY(FM), Channel 229C0, From MONTESANO, WA, To BELFAIR, WA, BPH-20181108AAQ; CHISHOLM TRAIL COMMUNICATIONS LLC, Fac. ID No. 165950, KOME-FM, Channel 238C3, From MERIDIAN, TX, To TOLAR, TX, BPH-20181228AAD; THE CROMWELL GROUP, INC. OF ILLINOIS, Fac. ID No. 65572, WMCI(FM), Channel 267B1, From NEOGA, IL, To MATTOON, IL, BPH-20181109ACC; CITICASTERS LICENSES, INC., AS DEBTOR IN

POSSESSION, Fac. ID No. 23830, WSOL-FM, Channel 268C, From BRUNSWICK, GA, To YULEE, FL, BPH-20181221AAT; CHISHOLM TRAIL COMMUNICATIONS LLC, Fac. ID No. 198784, KITT(FM), Channel 293A, From HICO, TX, To MERIDIAN, TX, BPH-20181228AAC; and JODESHA BROADCASTING, INC., Fac. ID No. 78160, KJET(FM), Channel 289C2, From RAYMOND, WA, To UNION, WA, BPH-20190128AAS.

The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW, Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2019-02559 Filed 2-14-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, February 20, 2019 at 10:00 a.m. and its continuation at the conclusion of the open meeting on February 21, 2019.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694-1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2019-02574 Filed 2-13-19; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL ELECTION COMMISSION

[Notice 2019-05]

Filing Dates for the Pennsylvania Special Election in the 12th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Pennsylvania has scheduled a special general election on May 21, 2019, to fill the U.S. House of Representatives seat in the 12th Congressional District vacated by Representative Thomas A. Marino.

Political committees participating in the Pennsylvania special general election are required to file pre- and post-election reports. The Commission is not requiring pre-election reports for candidates and committees involved in the special nominating caucuses due to time constraints.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Pennsylvania Special General Election shall file a 12-day Pre-General Report on May 9, 2019; and a Post-General Report on June 20, 2019. (See chart below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2019 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Pennsylvania Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Pennsylvania Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Pennsylvania Special General Election may be found on the FEC website at <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/>.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrator or lobbyist/registrator PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2018 was \$18,200. This threshold amount may increase in 2019 based upon the annual cost of living adjustment (COLA). Once the adjusted threshold amount becomes available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009-03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL GENERAL ELECTION

Report	Close of books ¹	Reg./cert. and overnight mailing deadline	Filing deadline
Campaign Committees Involved in the Special General (05/21/19) Must File			
Pre-General	05/01/19	05/06/19	05/09/19
Post-General	06/10/19	06/20/19	06/20/19
July Quarterly	06/30/19	07/15/19	07/15/19
PACs and Party Committees Not Filing Monthly Involved in the Special General (05/21/19) Must File			
Pre-General	05/01/19	05/06/19	05/09/19
Post-General	06/10/19	06/20/19	06/20/19

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL GENERAL ELECTION—Continued

Report	Close of books ¹	Reg./cert. and overnight mailing deadline	Filing deadline
Mid-Year	06/30/19	07/31/19	07/31/19

¹ The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

On behalf of the Commission.
 Dated: February 11, 2019.
Ellen L. Weintraub,
Chair, Federal Election Commission.
 [FR Doc. 2019-02383 Filed 2-14-19; 8:45 am]
BILLING CODE 6715-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary by email at *Secretary@fmc.gov*, or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission’s website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201289.
Agreement Name: Australia New Zealand South Pacific Islands Agreement.

Parties: PDL International PTE Ltd; ANL Singapore PTE Ltd dba Sofrana ANL; Pacific Forum Line (Group) Limited; and Neptune Pacific Line Inc.

Filing Party: David K. Monroe; GKG Law.

Synopsis: The agreement authorizes the parties to share vessels in the trade between Australia, New Zealand, New Caledonia, Vanuatu, Fiji, Tonga, and Samoa on the one hand, and American Samoa on the other hand. The parties are also authorized to cooperate in a pooling arrangement in the trade.

Proposed Effective Date: 3/28/2019.
Location: <http://fmcinet/Fmc.Agreements.Web/Public/AgreementHistory/21331>.

Dated: February 12, 2019.

Rachel Dickon,
Secretary.
 [FR Doc. 2019-02541 Filed 2-14-19; 8:45 am]
BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (“Act”) (12 U.S.C. 1817(j)) and § 225.41 of the Board’s Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 4, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Stephen J. Eager, Evansville, Wisconsin, individually and as trustee of the Melinda C. Poole 2012 Trust, Evansville, Wisconsin; Christopher A. Eager and Denise Janssen Eager, Palm Springs, California, as trustees of the Eager Revocable Trust, Evansville, Wisconsin; and Melinda C. Poole, Carmel, California, together as a group acting in concert;* to acquire voting shares of S.B.C.P. Bancorp, Inc. and thereby indirectly acquire State Bank of Cross Plains, both of Cross Plains, Wisconsin.

Board of Governors of the Federal Reserve System, February 12, 2019.

Yao-Chin Chao,
Assistant Secretary of the Board.
 [FR Doc. 2019-02513 Filed 2-14-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92-463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA-CE-19-004, Etiologic and Effectiveness Research To Address Polysubstance Impaired Driving.

Date: May 7–8, 2019.

Time: 8:30 a.m.–5:30 p.m., EDT.

Place: Atlanta Marriott Buckhead and Conference Center, 3405 Lenox Road NE, Atlanta, GA 30326.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Mikel Walters, Ph.D., Scientific Review Official, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F-63, Atlanta, Georgia 30341, Telephone (404) 639-0913, *MWalters@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019-02521 Filed 2-14-19; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-19-1014]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled CDC Worksite Health Scorecard to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on October 22, 2018 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

CDC Worksite Health Scorecard (OMB Control No. 0920-1014, Exp 02/28/2019)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) has established the Worksite Health Scorecard (Scorecard), an online organizational assessment tool, to enable employers to assess the number of evidence-based health promotion interventions or strategies in their worksites to promote employee health and well-being.

The Scorecard will support small, mid-size, and large employers with three primary goals: (1) Assist employers in identifying gaps in their health promotion programs, and help them to prioritize high-impact strategies for health promotion at their worksites; (2) Improve the health and wellbeing of employees and their families through science-based workplace health interventions and promising practices; and (3) Support research and increase understanding of the organizational programs, policies, and practices that employers of various sizes and industry sectors have implemented to support healthy lifestyle behaviors.

CDC is requesting a revision to a previously approved data collection. CDC plans to use an updated version of the Scorecard to expand the number of employers the new Scorecard is offered to. The updated Scorecard is based on a 2017 pilot test to determine the validity and reliability involving 89 employers (each represented by two

knowledgeable employees) who completed the survey and follow-up telephone interviews to gather general impressions of the Scorecard—particularly the new modules— and also to identify any problems with the wording and interpretation of the questions and understand the respondent’s information retrieval and decision-making processes when completing the instrument.

The revised instrument includes some reorganization of the instrument and minor revisions, particularly to the new modules/questions and the question prompts, to better explain and define the context, concepts, or administration of the strategies and interventions contained in the questions. The revised instrument also deleted several questions that respondents indicated were unattainable or generated confusion.

CDC will provide outreach to, and register approximately 800 employers per year to use the online survey, which is open to employers of all sizes, industry sectors, and geographic locations across the country. Scorecard users will create a user account, complete the online assessment and receive an immediate feedback report that summarizes the current status of their worksite health program; identifies gaps in current programming; benchmarks individual employer results against other users of the system; and provides access to worksite health tools and resources to address employer gaps and priority program areas.

CDC will use the information collected to evaluate the effectiveness of the Scorecard in terms of (1) identifying success drivers for building and maintaining successful workplace health programs; (2) raising awareness and knowledge of science-based worksite health programs, policies and practices; and (3) develop additional worksite health tools and resources for employers. The information will also be used to evaluate the impact of the CDC Worksite Health Scorecard on employer adoption of worksite health programs, policies, and environmental supports.

CDC requests a three-year OMB approval for this project. Participation in the Scorecard is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 667.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Employers	CDC Worksite Health ScoreCard Registration.	800	1	5/60
	CDC Worksite Health Scorecard	800	1	45/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019-02497 Filed 2-14-19; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-19-0338]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S. to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on August 22, 2018 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S. (OMB No. 0920-0338 exp. 12/31/2018)—Reinstatement without Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Smokeless tobacco products (SLT) are associated with many health problems. Using smokeless tobacco: Can lead to nicotine addiction; causes cancer of the mouth, esophagus, and pancreas; is associated with diseases of the mouth; can increase risks for early delivery and stillbirth when used during pregnancy; can cause nicotine poisoning in children; and may increase the risk for death from heart disease and stroke.

The CDC’s Office on Smoking and Health (OSH) has the primary responsibility for the HHS smoking and health program. As required by the Comprehensive Smokeless Tobacco Health Education Act of 1986 (CSTHEA,

15 U.S.C. 4401 *et seq.*, Pub. L. 99-252), CDC collects a list of ingredients added to tobacco in the manufacture of smokeless tobacco products and a specification of the quantity of nicotine contained in each product. HHS has delegated responsibility for implementing the required information collection to CDC’s OSH. Respondents are manufacturers, packagers, or importers (or their representatives) of smokeless tobacco products. Respondents are not required to submit specific forms; however, they are required to meet reporting guidelines and to submit the ingredient report by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies that are required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report. Respondents may submit the required information to CDC through a designated representative. The information collection is subject to strict confidentiality provisions.

Ingredient reports for new SLT products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to CDC by mailing a written report on the respondent’s letterhead, by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted. Annual submission reports are mailed to Attention: FCLAA Program Manager, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS S107-7, Atlanta, GA 30341-3717.

Upon receipt and verification of the annual nicotine and ingredient report, CDC issues a Certificate of Compliance to the respondent. As deemed appropriate by the Secretary of HHS, HHS is authorized to use the information to report to Congress the

health effects of ingredients, research activities related to the health effects of ingredients, and other information that

the Secretary determines to be of public interest.

There are no costs to respondents other than their time. OMB approval is requested for three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packers, and Importers.	SLT Nicotine and Ingredient and Report	11	1	1,713

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019-02496 Filed 2-14-19; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-19-18FJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Evaluation of the Chronic Disease Self-Management Program in the US Affiliated Pacific Islands to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on February 2, 2018 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Evaluation of the Chronic Disease Self-Management Program in the US Affiliated Pacific Islands—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCCDPHP plans to evaluate the first ever implementation of Stanford University's Chronic Disease Self-Management Program (CDSMP) in the US Affiliated Pacific Islands (USAPIs). CDSMP is a 6-week series of workshops

for people with arthritis, diabetes, lung disease, cancer, and other health problems. The workshops focus on helping participants learn strategies to manage chronic disease, including techniques to deal with problems such as frustration, fatigue, pain and isolation; appropriate exercise for maintaining and improving strength, flexibility, and endurance; and appropriate use of medications among others. Proven benefits of CDSMP include decreased pain and health distress, increased energy and fatigue, increased physical activity, better communication with health care providers, and increased confidence in managing chronic disease.

The program will be offered repeatedly over the course of three years, which will cover repeated data collections in the USAPIs. These jurisdictions include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. Because this is the first time CDSMP is being implemented in the USAPIs, we do not know if the intervention, which has proven to improve health outcomes in many ethnic groups within the United States, will lead to improved health outcomes for these communities.

The purpose of the evaluation is to understand how CDSMP is being implemented in the region, to identify barriers and facilitators to implementation, to monitor fidelity to Stanford University's model and document adaptations to the curriculum, and to understand the self-reported effects of the program on program participants. The estimated annual burden hours are 95. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Program Participant	Chronic Disease Self-Management Workshop Evaluation.	190	1	10/60
Program Participant	Chronic Disease Self-Management Questionnaire (Pre-Post Test).	190	2	10/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019-02495 Filed 2-14-19; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (last amended at **Federal Register**, Vol. 76, No. 203, pp. 65197-65199, dated October 20, 2011 is amended to reflect a change in functional responsibility between the Center for Medicaid and CHIP Services (CMCS) within the Office of the Administrator and the Consortium for Medicaid and Children’s Health Operations (CMCHO) within the Chief Operating Officer.

CMCS serves as CMS’ focal point for assistance with formulation, coordination, integration, and implementation of all national program policies and operations relating to Medicaid, Children’s Health Insurance Program (CHIP), and the Basic Health Program. In partnership with States, CMCS assists State agencies in successfully carrying out their responsibilities for effective program administration and beneficiary protection, and, as necessary, supports States in correcting problems and improving the quality of their operations. CMCHO serves as the local point of contact for CMS activities related to Medicaid and CHIP. CMCHOs’ key activities are linked to and carried out in conjunction with CMCS. The key activities include: supporting program transparency and fiscal oversight of the Medicaid and

CHIP; and delivering technical assistance to States to help achieve the Administration’s and States’ Medicaid goals and objectives to support high-functioning State Medicaid programs.

Close collaboration between CMCS and CMCHO is critical in addressing the need for an increased level of consistency and accountability in working with the States. The complexities of the Medicaid program make this particularly challenging since each State has a different approach to the program. In order to maximize consistency across the two organizations, there already have been several standard operating procedures and quality improvement initiatives instituted.

This reorganization addresses the Agency’s needs by supporting consistent policy implementation and accountability (structural and outcome measures) for Medicaid and CHIP activities, and improved communication. The functions in CMCHO were merged within CMCS as the Regional Operations Group in addition to establishing the Regional Management Office (RMO) and the Division of Health Information Technology for Economic and Clinical Health and Medicaid Management Information System. The functions in the Special Initiatives Division were merged within CMCS and the RMO.

Part F, Section FC.20 (Functions) is amended as follows:

Section FC.20 (Functions)

- Serves as CMS’ focal point for assistance with formulation, coordination, integration, and implementation of all national program policies and operations relating to Medicaid, the Children’s Health Insurance Program (CHIP), and the Basic Health Program (BHP).

- In partnership with States, assists State agencies in successfully carrying out their responsibilities for effective program administration and beneficiary protection, and, as necessary, supports States in correcting problems and improving the quality of their operations.

- Identifies and proposes modifications to Medicaid, CHIP, and

BHP program measures, regulations, laws, and policies to reflect changes or trends in the health care industry, program objectives, and the needs of Medicaid, CHIP, and BHP beneficiaries. Collaborates with the Office of Legislation on the development and advancement of new legislative initiatives and improvements.

- Serves as CMS’ lead for management, oversight, budget, and performance issues relating to Medicaid, CHIP, BHP and the related interactions with States and the stakeholder community.

- Coordinates with the Center for Program Integrity on the identification of program vulnerabilities and implementation of strategies to eliminate fraud, waste, and abuse. Leads and supports all CMS interactions and collaboration relating to Medicaid, CHIP, and BHP with States and local governments, territories, Indian tribes and tribal healthcare providers, key stakeholders (e.g., consumer and policy organizations and the health care provider community) and other Federal government entities. Facilitates communication and disseminates policy and operational guidance and materials to all stakeholders and works to understand and consider their perspectives, support their efforts, and to develop best practices for beneficiaries across the country and throughout the health care system.

- Develops and implements a comprehensive strategic plan, objectives, and measures to carry out CMS’ Medicaid, CHIP, and BHP mission and goals and positions the organization to meet future challenges with Medicaid, CHIP, and BHP.

The functional responsibilities for CMCHO have been deleted at *cms.gov* (<https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/index.html>).

Authority: 44 U.S.C. 3101.

Dated: February 5, 2019.

Seema Verma,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 2019-02400 Filed 2-13-19; 4:15 pm]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Opportunity for Hearing on Compliance of Texas Calculation of Post-Eligibility Treatment of Income With Titles XI and XIX (Medicaid) of the Social Security Act

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice of opportunity for a hearing; Compliance of Texas calculation of post-eligibility treatment of income for institutionalized individuals and certain participants in home and community-based services waivers.

DATES: Requests to participate in the hearing as a party must be received by the presiding officer by March 18, 2019.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Cohen, Hearing Officer, Centers for Medicare & Medicaid Services, 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: This notice announces the opportunity for an administrative hearing concerning the finding of the Administrator of the Centers for Medicare & Medicaid Services (CMS) that the Texas Health and Human Services Commission (HHSC) is not properly calculating the post-eligibility treatment of income (PETI) for institutionalized individuals and certain participants in home and community-based services (HCBS) waivers.

Section 1902(r)(1) of the Social Security Act (the Act), codified at 42 U.S.C. 1396a(r)(1), mandates that, in applying the PETI calculation against institutionalized individuals and certain participants of HCBS waivers to determine how much of their income must be contributed to the cost of their institutional or HCBS waiver services, states must deduct from their incomes “amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including . . . necessary medical or remedial care recognized under State law but *not covered under the State plan* [.]” (Emphasis added.) This statutory mandate is incorporated in the federal regulations at 42 CFR 435.725(c)(4)(ii) and 435.733(c)(4)(ii) (for the categorically needy in non-209(b) states).

CMS has consistently interpreted the phrase “not covered under the state plan” as meaning *not paid for* by the state Medicaid program. (See *Maryland*

Dept. of Health and Mental Hygiene v. Centers for Medicare and Medicaid Services, 542 F.3d 424, 432–433 (3rd Cir. 2008)). Thus, deductions must be made in the PETI calculation for incurred medical or remedial expenses for services that are not included in the state plan, or that are included in the state plan but were not paid for by the state Medicaid agency because the individual was not eligible for Medicaid when the services were delivered. States are permitted to limit past medical expenses to those incurred within three months of an individual applying for Medicaid. 42 CFR 435.831. However, the Texas HHSC has acknowledged that it limits the mandatory incurred medical expense deduction in the PETI calculation to those that were incurred when an individual was eligible under the state plan. This practice has the effect of excluding services that are covered under the state plan but which were not paid for by the Texas HHSC because the individual was not eligible for Medicaid when they were delivered.

Throughout 2017, CMS and the Texas HHSC engaged in several discussions during which CMS explained its longstanding interpretation of section 1902(r)(1) of the Act. CMS also provided several documents supporting that interpretation, including a 2008 decision from the U.S. Court of Appeals for the Fourth Circuit, in which the court upheld CMS’s disapproval of a Maryland state plan amendment (SPA) that proposed a PETI calculation method nearly identical to the one that the Texas HHSC presently imposes. On May 1, 2018, CMS issued a corrective action letter, informing the Texas HHSC that, if it did not demonstrate compliance with these requirements within 30 days of the date of the letter, CMS would initiate formal compliance proceedings. Texas HHSC asked for several extensions and ultimately submitted a formal response on August 10, 2018. The August 10, 2018, response did not evidence compliance with section 1902(r)(1) of the Act.

Absent a hearing request or if, following a hearing requested, the Administrator determines that the Texas HHSC is not in compliance with federal Medicaid law and regulations, CMS will begin withholding federal financial participation (FFP). The FFP withholding will continue until the Texas HHSC comes into compliance with the requirement in section 1902(r)(1) of the Act to deduct incurred medical or remedial expenses for services that are included in the state plan but were not paid for by the state Medicaid agency in its PETI calculations.

The notice to Texas containing the details concerning this compliance issue, the proposed withholding of FFP, opportunity for a hearing, and possibility of postponing and ultimately avoiding withholding by coming into compliance, reads as follows:

Dear Ms. Muth:

This letter provides notice that the Centers for Medicare & Medicaid Services (CMS) has determined the Texas Health and Human Services Commission (HHSC) to be out of compliance with federal Medicaid law in the manner in which it conducts its post-eligibility treatment of income (PETI) calculations for institutionalized individuals and certain individuals receiving home and community-based services (HCBS). The Texas HHSC policy and practice violates section 1902(r)(1) of the Social Security Act (the Act), codified at 42 U.S.C. 1396a(r)(1), which requires generally that incurred medical expenses not covered by a third party must be taken into account in making the PETI calculations.

Pursuant to section 1904 of the Act, codified at 42 U.S.C. 1396c, and 42 CFR 430.35, a portion of the federal financial participation (FFP) of the administrative costs associated with the operation of the Texas Medicaid program will be withheld. However, CMS is first providing the Texas HHSC with an opportunity for a hearing on this withholding decision. Absent a hearing request or if, following a hearing requested, the Administrator determines that the Texas HHSC is not in compliance with federal Medicaid law and regulations, CMS will begin this FFP withholding. The FFP withholding will continue until the Texas HHSC comes into compliance with the requirement in section 1902(r)(1) of the Act to deduct incurred medical or remedial expenses for services that are included in the state plan but were not paid for by the state Medicaid agency in its PETI calculations. The details of the finding, proposed withholding, opportunity for Texas to request a hearing on the finding, and possibility of postponing, and ultimately avoiding, withholding by coming into compliance are described below.

I. The Finding

Section 1902(r)(1) of the Act mandates that, in applying the PETI calculation against institutionalized individuals and certain participants of HCBS waivers to determine how much of their income must be contributed to the cost of their institutional or HCBS waiver services, states must deduct from an individual’s income “amounts for incurred expenses

for medical or remedial care that are not subject to payment by a third party, including . . . necessary medical or remedial care recognized under State law *but not covered under the State plan*.” (Emphasis added.) This statutory mandate is incorporated in the federal regulations at 42 CFR 435.725(c)(4)(ii) and 435.733(c)(4)(ii) (for the categorically needy in non-209(b) states).

CMS has consistently interpreted the phrase “not covered under the state plan” as meaning *not paid for* by the state Medicaid program. (See *Maryland Dept. of Health and Mental Hygiene v. Centers for Medicare and Medicaid Services*, 542 F.3d 424, 432–433 (3rd Cir. 2008)). Thus, deductions must be made in the PETI calculation for incurred medical or remedial expenses for services that are not included in the state plan, or that are included in the state plan but were not paid for by the state Medicaid agency because the individual was not eligible for Medicaid when the services were delivered. States are permitted to limit past medical expenses to those incurred within three months of an individual applying for Medicaid. 42 CFR 435.831. However, the Texas HHSC has acknowledged that it limits the incurred medical expense deduction in the PETI calculation to only those expenses incurred on or after the date on which the individual met all eligibility requirements for Medicaid. This practice has the effect of excluding services that are covered under the state plan but which were not paid for by the Texas HHSC because the individual was not eligible for Medicaid when they were delivered, regardless of how recently the services were provided.

Throughout 2017, CMS and the Texas HHSC engaged in several discussions, during which CMS explained its longstanding interpretation of section 1902(r)(1) of the Act. CMS also provided several documents supporting that interpretation, including a 2008 decision from the U.S. Court of Appeals for the Fourth Circuit, in which the court upheld CMS’s disapproval of a Maryland state plan amendment (SPA) that proposed a PETI calculation method nearly identical to the one the Texas HHSC presently imposes. On May 1, 2018, CMS issued a corrective action letter informing the Texas HHSC that, if it did not demonstrate compliance with these requirements within 30 days of the date of the letter, CMS would initiate formal compliance proceedings. The Texas HHSC asked for several extensions and ultimately submitted a formal response on August 10, 2018. The August 10, 2018, response did not

evidence compliance with section 1902(r)(1) of the Act.

The Texas HHSC’s submission of its quarterly expenditure reports through the CMS-64 includes a certification that the state is operating under the authority of its approved Medicaid state plan. However, at this time, CMS has not received information from the Texas HHSC providing evidence of compliance with section 1902(r)(1) of the Act.

II. Proposed Withholding

In light of the Texas HHSC’s non-compliance with section 1902(r)(1) of the Act, CMS is moving forward with a formal determination of substantial noncompliance with federal requirements described in section 1902(r)(1) of the Act to deduct amounts for incurred expenses for medical or remedial care recognized under state law but not covered under the state plan in the PETI calculation. Subject to the Texas HHSC’s opportunity to request a hearing, CMS will withhold a portion of FFP from the Texas HHSC’s quarterly claim of expenditures for administrative costs until such time as the Texas HHSC is and continues to be in compliance with the federal requirements. 42 CFR 430.35. The withholding will initially be 4 percent of the federal share of the Texas HHSC’s quarterly claim for administrative expenditures, an amount that was developed based on the proportion of total state Medicaid expenditures that are used for expenditures for eligibility determinations, as reported on Form CMS-64.10 Line 50. The withholding percentage will increase by 2 percentage points for every quarter in which the Texas HHSC remains out of compliance, up to a maximum withholding percentage of 100 percent (of total administrative expenditures). The withholding will end when the Texas HHSC demonstrates that it has implemented a corrective action plan bringing its procedures to process eligibility determinations under its Medicaid program into compliance with the federal requirements found at section 1902(r)(1) of the Act.

III. Opportunity to Request a Hearing

Hearing procedures are found at 42 C.F.R. Part 430 Subpart D. As specified in the accompanying **Federal Register** notice, the Texas HHSC may request an administrative hearing within 30 days of the date of this letter prior to this determination becoming final. 42 CFR 430.70; 42 CFR 430.72(a). Upon receipt of a timely hearing request, the hearing will be convened by the Hearing Officer designated below no later than 60 days

from the date of this letter, unless a later date is agreed to by the state and CMS. 42 CFR 430.72(a). The hearing will take place at the CMS Regional Office in Dallas, Texas. 42 CFR 430.72(a). The issue in any such hearing will be whether, in applying the PETI calculation against institutionalized individuals and certain participants of HCBS waiver, Texas HHSC properly deducts from their incomes amounts for incurred expenses for medical or remedial care recognized under State law but not covered under the state plan, in accordance with section 1902(r)(1) of the Act. Please note that additional issues may be considered at the hearing, provided that the additional issues are sent to the state in writing and published in the **Federal Register**. 42 CFR 430.74.

Any request for such a hearing should be sent to the designated Hearing Officer. The Hearing Officer also should be notified if the Texas HHSC requests a hearing but cannot meet the timeframe expressed in this notice. The Hearing Officer designated for this matter is: Benjamin R. Cohen, Hearing Officer
Centers for Medicare & Medicaid Services
2520 Lord Baltimore Drive, Suite L
Baltimore, MD 21244

Should you not request a hearing within 30 days, a notice of withholding will be sent to you and the withholding of federal funds will begin as described above.

IV. Submission of Plan to Come into Compliance

If the Texas HHSC intends to come into compliance with its approved state plan and section 1915(c) waivers, the Texas HHSC should submit, within 30 days of the date of this letter, an explanation of how it plans to come into compliance with federal requirements and the timeframe for doing so. If that explanation is satisfactory, CMS may consider postponing any requested hearing, which could also delay the imposition of the withholding of funds as described above. Our goal is to have the Texas HHSC come into compliance with federal law, and CMS continues to be available to provide technical assistance to the Texas HHSC to achieve this outcome.

If you have any questions or wish to discuss this determination further, please contact:

Bill Brooks
Associate Regional Administrator
Division of Medicaid and Children’s
Health Operations
CMS Dallas Regional Office, 1301
Young Street, Suite 714

Dallas, TX 75202
214-767-4461

Sincerely,

Seema Verma

cc: Benjamin R. Cohen

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18) (Catalog of Federal Domestic Assistance program No. 13.714. Medicaid Assistance Program.)

Dated: February 11, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019-02401 Filed 2-14-19; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-N-0801]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on export notification and recordkeeping requirements for persons exporting human drugs, biological products, devices, animal drugs, food, cosmetics, and tobacco that may not be marketed or sold in the United States.

DATES: Submit either electronic or written comments on the collection of information by April 16, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 16, 2019. Comments received by mail/hand delivery/courier

(for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2014-N-0801 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Exports: Notification and Recordkeeping Requirements." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Exports: Notification and Recordkeeping Requirements—21 CFR 1.101

OMB Control Number 0910-0482—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381) charges the Secretary of Health and Human Services, through FDA, with the responsibility of helping to ensure that exports of unapproved new drugs, biologics, devices, animal drugs, food, cosmetics, and tobacco products which are not to be sold in the United States meet the requirements of the country to which the product is to be exported. The respondents to this information collection are exporters who have notified FDA of their intent to export unapproved products that may not be sold or offered for sale in domestic commerce in the United States as allowed under section 801(e) of the FD&C Act. In general, the notification identifies the product being exported (e.g. name, description, and in some cases, country of destination) and specifies where the notifications were sent. These notifications are sent only

for an initial export. Subsequent exports of the same product to the same destination or in the case of certain countries identified in section 802(b) of the FD&C Act (21 U.S.C. 382) would not result in a notification to FDA.

The recordkeepers for this information collection are exporters of products that may not be sold in the United States who are regulated by the following FDA Centers: Center for Drug Evaluation and Research (CDER) (human drugs); Center for Biologics Evaluation and Research (CBER) (biologics); Center for Devices and Radiological Health (CDRH) (medical devices); Center for Veterinary Medicine (CVM) (animal drugs); Center for Food Safety and Applied Nutrition (CFSAN) (foods and cosmetics); and Center for Tobacco Products (CTP) (tobacco products). Respondents to this collection of information maintain records demonstrating their compliance with the requirements in 21 CFR 1.101.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1.101(d) (CBER)	5	92	460	15	6,900
1.101(d) (CDER)	5	180	900	15	13,500
1.101(d) (CDRH)	160	1	160	15	2,400
Total					22,800

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1.101 (b), (c), (e) (CBER, CDER, CDRH, CFSAN, and CVM)	320	3	960	22	21,120
1.101(b) Office of International Programs only	1	189	189	22	4,158
1.101(b) (currently regulated Tobacco Products)	322	3	966	22	21,252
Total					46,530

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We have adjusted our burden estimate, which has resulted in an overall decrease of 129,543 hours to the currently approved burden. The reporting burden estimate for CDRH has been adjusted to correct an error and corresponding miscalculation in the previous burden estimate and has been updated based on recent internal data. This adjustment contributed to the overall burden estimate reduction by

eliminating 8,030 responses and 120,450 hours from the reporting burden estimate. CBERS estimated reporting burden for the information collection in table 1 reflects a decrease of 7,575 hours and a corresponding decrease of total annual responses (193 to 92). We attribute this adjustment to a normal variation in the number of submissions we received over the last few years. CTP's current number of

respondents and recordkeeping burden hours in table 2 are expected to decrease by 23 respondents and 1,518 hours. This is based on summary derived from the monthly operational reports that manufacturers and importers of tobacco products are required to file with the Alcohol and Tobacco Tax and Trade Bureau.

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-02480 Filed 2-14-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-4000]

Framework for a Real-World Evidence Program; Availability; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the document entitled “Framework for a Real-World Evidence Program; Availability” that appeared in the **Federal Register** on December 7, 2018. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the document published December 7, 2018 (83 FR 63178). Submit either electronic or written comments on the document by April 16, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2018-N-4000 for “Framework for a Real-World Evidence Program; Availability.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

FOR FURTHER INFORMATION CONTACT:

Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993-0002, 301-796-2500, dianne.paraoan@fda.hhs.gov; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911, stephen.ripley@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 7, 2018 (83 FR 63178), FDA published a notice of availability with a 60-day comment period to request comments on the framework entitled “Framework for a Real-World Evidence Program.” That document established a public docket to collect comments on this framework created by the Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research for implementing a program to evaluate the potential use of real-world evidence in regulatory decision making. The document requested comments by February 5, 2019. Based on the public interest underlying the notice, FDA is reopening the comment period until April 16, 2019. The Agency believes that reopening the comment period for 60 days allows adequate time for interested persons to submit comments.

Dated: February 12, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-02561 Filed 2-14-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2019-N-0426]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on March 25 and 26, 2019, 8 a.m. to 6 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

Information about the FDA's Meeting facility on the White Oak Campus can be found at <https://www.fda.gov/aboutfda/workingatfda/buildingsandfacilities/whiteoakcampusinformation/ucm241740.htm>.

FOR FURTHER INFORMATION CONTACT:

Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993-0002, Patricio.Garcia@fda.hhs.gov, 301-796-6875, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On March 25 and 26, 2019, the committee will discuss and make recommendations regarding the benefits and risks of breast implants indicated for breast augmentation and reconstruction concerning the following topics: (1) Breast implant associated anaplastic large cell lymphoma (BIA-ALCL); (2) systemic symptoms reported in patients receiving breast implants; (3) the use of registries for breast implant surveillance; (4) magnetic resonance imaging screening for silent rupture of silicone gel filled breast implants; (5) the use of surgical mesh in breast procedures such as breast reconstruction and mastopexy; (6) the use of real-world data and patient perspectives in regulatory decision making, and (7) best practices for informed consent discussions between patients and clinicians.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 4, 2019. Oral presentations from the public will be scheduled on March 25, 2019, between approximately 11 a.m. and 12 noon and 2:30 p.m. to 3:30 p.m. Oral presentations from the public will be scheduled on March 26, 2019, between approximately 10 a.m. and 11 a.m. and 3 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and indicate in which session they would like to present (which day, morning or afternoon session). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 27, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can

be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing sessions. The contact person will notify interested persons regarding their request to speak by February 28, 2019.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams, at annmarie.williams@fda.hhs.gov or 301-796-5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm11462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-02380 Filed 2-14-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2019-N-0573]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Blood Products Advisory Committee (BPAC). The general function of the committee is to provide advice and recommendations to the Agency on regulatory issues related to blood and products derived from blood. Matters considered at the meeting will include testing of the blood supply for Zika virus, topics relevant to blood donation by men who have sex with men, and an overview of research programs in the Laboratory of

Biochemistry and Vascular Biology. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on March 20, 2019, from 8:30 a.m. to 4:45 p.m., and March 21, 2019, from 8:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

For those unable to attend in person, the meeting will also be webcast and will be available at the following link: <https://collaboration.fda.gov/bpac0319>.

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993-0002, 240-402-8006, Prabhakara.Atreya@fda.hhs.gov; Joanne Lipkind, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6270, Silver Spring, MD 20993-0002, 240-402-8106, Joanne.Lipkind@fda.hhs.gov; or the FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting. For those unable to attend in person, the meeting will also be available via webcast. The webcast will be available at the following link for both days: <https://collaboration.fda.gov/bpac0319>.

SUPPLEMENTARY INFORMATION:

Agenda: On March 20, 2019, in the morning, BPAC will meet in open session to discuss and make recommendations on strategies to reduce the risk of Zika virus (ZIKV) transmission by blood and blood components. The committee will

discuss whether universal testing of blood donations for ZIKV is an appropriate strategy considering the decline of the ZIKV epidemic in the United States and worldwide. In the afternoon, the committee will meet in open session to hear an overview of the research programs in the Laboratory of Biochemistry and Vascular Biology in the Division of Blood Components and Devices, Office of Blood Research and Review, Center for Biologics Evaluation and Research, FDA.

On March 21, 2019, the committee will meet in open session to discuss blood donation policies regarding men who have sex with men (MSM). The committee will hear presentations on the current epidemiology of HIV in the United States; global developments in MSM blood donor deferral policies; and data on HIV incidence and prevalence among blood donors from the Transfusion-Transmitted Infection Monitoring System. The committee will discuss a proposed HIV risk questionnaire study. In addition, the committee will discuss a proposal for the use of pathogen reduction technology as an alternative procedure to a time-based deferral for MSM.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: On March 20, 2019, from 8:30 a.m. to 4 p.m., and on March 21, 2019, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 13, 2019. On March 20, 2019, oral presentations from the public will be scheduled between approximately 11:10 a.m. to 11:40 a.m. and 3:15 p.m. to 3:45 p.m. On March 21, 2019, oral presentations from the public will be scheduled between approximately 11:25 a.m. and 11:55 a.m. and between 3 p.m. and 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the

evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 5, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 6, 2019.

Closed Committee Deliberations: On March 20, 2019, from 4 p.m. to 4:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the investigator's research will, along with other information, be used in making personnel and staffing decisions regarding individual scientists. We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019-02507 Filed 2-14-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-4414]

Established Conditions; Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency), Center for Drug Evaluation and Research (CDER) is announcing the opportunity for a limited number of applicants to participate in an Established Conditions Pilot Program, to propose explicit established conditions (ECs) as part of an original new drug application (NDA), abbreviated new drug application (ANDA), biologics license application (BLA), or as a prior approval supplement (PAS) to any of these. The concept of ECs was first described in the FDA draft guidance for industry entitled “Established Conditions: Reportable CMC Changes for Approved Drug and Biologic Products”, issued May 2015 and has been further discussed in the International Council for Harmonisation (ICH) draft guidance for industry entitled “Q12 Technical and Regulatory Considerations for Pharmaceutical Product Lifecycle Management; International Council for Harmonisation”, issued May 30, 2018. FDA is implementing this pilot program to gain experience receiving, assessing, and engaging with applicants regarding proposed ECs (*i.e.*, explicit ECs).

DATES: FDA will accept nine requests submitted before May 30, 2019 from applicants intending to submit NDAs, ANDAs, or BLAs, either original applications or prior approval supplements, with proposed ECs.

FOR FURTHER INFORMATION CONTACT: Ashley Boam, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Silver Spring, MD 20993, 301-796-6341, *CDER-OPQ-Inquiries@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The concept of ECs was first described in the FDA draft guidance for industry entitled “Established Conditions: Reportable CMC Changes for Approved Drug and Biologic Products” (hereafter, “FDA guidance”) issued May 2015 (80 FR 31050) and has been further discussed in the ICH draft guidance for industry entitled “Q12 Technical and Regulatory

Considerations for Pharmaceutical Product Lifecycle Management; International Council for Harmonisation”, (hereafter “ICH Q12 guidance”) issued May 30, 2018 (83 FR 25018).

The regulations at §§ 314.50(d)(1), 314.54(a)(1), and 314.94(a)(9) (21 CFR 314.50(d)(1), 314.54(a)(1), and 314.94(a)(9)) require that any NDA or ANDA submitted to the Agency contain a chemistry, manufacturing, and controls (CMC) section that describes information such as the composition of the drug product, manufacture of the drug substance, and manufacture of the drug product. Similarly, under § 601.2 (21 CFR 601.2), applicants submitting BLAs must also provide relevant CMC information, such as a full description of manufacturing methods and data establishing stability of the product through the dating period.

All changes after approval of an application must be managed and executed in conformance with current good manufacturing practice (CGMP), although §§ 314.70(a) and 601.12(a) only require a subset of changes to be reported to the FDA. Sections 314.70(a)(1)(i) and 314.97 require that, other than the exceptions or alternatives provided in § 314.70(a)(1)(ii), an applicant notify FDA about each change in each condition established in an approved NDA or ANDA beyond the variations already provided for in the approved application. Per § 601.12(a)(1), an applicant must inform FDA about each change in the product, production process, quality controls, equipment, facilities, responsible personnel, or labeling established in the approved BLA.

After approval of an application, applicants desiring to make changes to this CMC information must evaluate the changes in the context of the regulations to determine if there is a need to report the change and associated supporting data and justifications to FDA. Although the reporting mechanism for many CMC changes has been made clear through publication of various guidance documents, FDA issued its draft guidance on ECs due to concern that there is confusion regarding which elements of an application are considered to be ECs. This confusion could have a negative impact on change management activities and could discourage continual improvement in product manufacturing processes, lead to unnecessary submission of postapproval supplements to FDA for changes that could be managed solely by a manufacturer’s Pharmaceutical Quality System, or, upon inspection, lead to Form FDA 483 observations for

changes that should have been reported to FDA. Moreover, a better understanding of which elements of the CMC information constitute ECs to FDA, and where in an application these elements are generally expected to be described, could allow for a more effective postapproval submission strategy (*e.g.*, effective use of risk management principles in ICH Q9 “Quality Risk Management,” and knowledge management as defined in ICH Q10 “Pharmaceutical Quality System”) by the regulated industry.

In the FDA draft guidance, ECs are defined as the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy, as defined in an application, that assure process performance and quality of an approved product. Changes to the ECs must be reported to FDA (§§ 314.70 and 601.12). This definition is consistent with the ICH Q12 guidance, which states that “ECs are legally binding information (or approved matters) considered necessary to assure product quality. Consequently, any change to ECs necessitates a submission to the regulatory authority.”

Although each application submitted to the Agency contains ECs, as described in §§ 314.70(a) and 601.12(a), FDA has not specifically indicated the applicable ECs for each application at the time of approval. In addition, the draft ICH Q12 guidance describes how an applicant can specifically identify and propose so-called “explicit” ECs in which the EC itself or the reporting category for the EC, if changed, differs from existing requirements as described in regulations and guidance. Such explicit ECs should be supported by an appropriate justification that takes into consideration the applicant’s development approach and risk to product quality. FDA recognizes that this process will be new for both applicants and Agency staff. Therefore, FDA is proposing this pilot program.

II. Objectives

The objectives of this pilot program are to gain practical experience in:

- Assessing proposed ECs (*i.e.*, explicit ECs);
- engaging with applicants during the review cycle to refine proposed ECs;
- ensuring assessment decisions are made without negatively impacting the ability to meet user fee timeframes; and
- identifying agreed-upon ECs at the time of approval.

FDA further encourages applicants who are accepted into this pilot program to pursue pre-submission meetings (pre-NDA, pre-BLA, or pre-ANDA, where

appropriate) through existing mechanisms. See, for example, FDA draft guidances entitled “Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products and Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products” (once final, these guidance documents will represent FDA’s current thinking on these topics) to improve the likelihood that a list of agreed-upon ECs can be reached prior to application approval. Although FDA’s Center for Biologics Evaluation and Research (CBER) is not participating in this pilot, CBER intends to leverage CDER’s experience from the pilot as CBER assesses explicit ECs in future submissions.

III. Requests To Participate

Parties who have an interest in participating in this Established Conditions Pilot Program and who plan to propose explicit ECs in an upcoming marketing application should submit a written request to the *CDER-OPQ-Inquiries@fda.hhs.gov* mailbox. The request should specify the request to participate in the Established Conditions Pilot Program.

The request should also include the following items:

1. The contact person’s name, company name, and company contact information.
2. The proposed application type (NDA, ANDA, BLA; original or supplement).
3. The established name of the proposed product and a brief description (e.g., dosage form, indication).
4. Plans for any pre-NDA, pre-BLA, or pre-ANDA meetings to take place prior to application submission. Requests for such meetings should follow previously established procedures as outlined in relevant guidance documents.
5. Expected timing for submission of the application. The submission should be planned for receipt by FDA no later than July 1, 2019.
6. Acknowledgement that participation in the pilot program may be discontinued if the manufacturing facilities named in the application are not in a state of compliance with CGMP at the time of the application submission.

We intend to accept nine requests that meet the criteria above and represent a variety of application types, as Agency resources allow. FDA expects to notify companies of its decision regarding acceptance into the pilot program in writing within 60 days of receipt of the request. Although incomplete and/or unclear requests will generally be

denied, FDA may contact the applicant to request additional information.

FDA intends to accept requests to participate starting on the date of publication of this notice.

IV. Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The collections of information in 21 CFR part 314 for submitting NDAs and ANDAs have been approved under OMB control number 0910–0001, and the collections of information in 21 CFR part 601 for submitting BLAs has been approved under OMB control number 0910–0338.

FDA also has OMB approval under control number 0910–0429 for submissions under the guidance for industry entitled “Formal Meetings Between the FDA and Sponsors or Applicants,” and under the guidance for industry “Controlled Correspondence Related to Generic Drug Development” (OMB control number 0910–0797).

V. References

The following references are on display in 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; these are also available electronically at <https://www.regulations.gov>. FDA 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 entitled “Established Conditions: Reportable CMC Changes for Approved Drug and Biologic Products” (May 2015), available at <https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm448638.pdf>.
2. FDA draft guidance for industry entitled “ICH Q12 Technical and Regulatory Considerations for Pharmaceutical Product Lifecycle Management” (May 2018), available at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM609205.pdf>.
3. FDA draft guidance for industry entitled “Formal Meetings Between the FDA and Sponsors or Applicants for PDUFA Products” (December 2017), available at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM590547.pdf>.
4. FDA draft guidance for industry entitled “Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA

Products” (June 2018), available at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM609662.pdf>.

5. FDA draft guidance for industry entitled “Controlled Correspondence Related to Generic Drug Development” (November 2017), available at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM583436.pdf>.

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02364 Filed 2–14–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0482]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated With New Animal Drug Applications and Veterinary Master Files

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with new animal drug applications.

DATES: Submit either electronic or written comments on the collection of information by April 16, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 16, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service

acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA-2019-N-0482 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated with New Animal Drug Applications and Veterinary Master Files." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be

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

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting Associated With New Animal Drug Applications (NADA) and Veterinary Master Files—21 CFR 514.1, 514.4, 514.5, 514.6, 514.8, 514.11, and 558.5

OMB Control Number 0910-0032—Extension

Under section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(b)(1)), any person may file a new animal drug application (NADA) seeking our approval to legally market a new animal drug. Section 512(b)(1) sets forth the information required to be submitted in a NADA. Sections 514.1, 514.4, 514.6, 514.8, and 514.11 of our regulations (21 CFR 514.1, 514.4, 514.6, 514.8, and 514.11) further specify the information that the NADA must contain. The application must include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. FDA Guidance #152 outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. We request that applicants utilize Form FDA 356V, as appropriate, to ensure efficient and accurate processing of information to support new animal drug approval.

Under section 512(b)(3) of the FD&C Act, any person intending to file a NADA or supplemental NADA or a

request for an investigational exemption under section 512(j) of the FD&C Act is entitled to one or more conferences with us prior to making a submission. Section 514.5 of our regulations (21 CFR 514.5) describes the procedures for requesting, conducting, and documenting presubmission conferences. We have found that these meetings have increased the efficiency of the drug development and drug review processes. We encourage sponsors to submit data for review at the most appropriate and productive times in the drug development process. Rather than submitting all data for review as part of a complete application, we have found that the submission of data supporting discrete technical sections during the investigational phase of the new animal drug is the most appropriate and productive. This “phased review” of data submissions has created efficiencies for both us and the animal pharmaceutical industry.

Additionally, we have found that various uses of veterinary master files have increased the efficiency of the drug development and drug review processes for both us and the animal pharmaceutical industry. A veterinary master file is a repository for submission to FDA’s Center for Veterinary Medicine of confidential detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more veterinary drugs. The benefits of veterinary master files include confidential exchange of information with FDA, a process for reporting information outside of a NADA or an investigational new animal drug (INAD) file, as well as an opportunity for increased communication with FDA during early stages of product development. Respondents may choose to use veterinary master files to provide and organize confidential detailed

information to the Agency. A holder of a veterinary master file may also authorize other parties to reference information in the veterinary master file without disclosing information in the file to those parties. Veterinary master files can be used as repositories for information that can be referenced in multiple submissions to the Agency, thus minimizing paperwork burden. Veterinary master files are already used by the animal pharmaceutical industry in support of information being submitted for NADAs, abbreviated new animal drug applications (ANADAs), INAD files, and generic investigational new animal drug (JINAD) files. In previous information collection requests, we have included the time necessary to compile and submit such information to veterinary master files within the burden estimates provided for applications and amended applications (for NADAs and INAD files) and abbreviated applications and amended abbreviated applications (for ANADAs and JINAD files), respectively. We are now combining the time necessary to compile and submit such information to veterinary master files within the burden estimates provided in this collection of information.

We are also developing new approaches to permit more complex uses of veterinary master files to facilitate the development of animal drug products. We expect respondents will want to use veterinary master files to submit information to us for review and consultation during all phases of animal drug product development (including product development that precedes the establishment of an INAD file or the submission of a NADA). This information could include information about processes, facilities, or articles used in the manufacturing, processing, packaging, and storing of veterinary drugs and drug substances. Information

submitted to FDA through a veterinary master file could also include drug characterization, methods, protocols, or other relevant information. In this request for OMB review, we seek approval of an increased use of veterinary master files by respondents to submit additional information to us for review and consultation during all phases of animal drug product development (including product development that precedes the establishment of an INAD file or the submission of a NADA). To account for an expected increase in reporting burden hours associated with the increased use of veterinary master files by respondents, we are separately estimating in table 1, row 10, the burden of the use of veterinary master files during all phases of product development (including product development that precedes the establishment of an INAD file or the submission of a NADA).

Finally, § 558.5(i) of our regulations (21 CFR 558.5(i)) describes the procedure for requesting a waiver of the labeling requirements of § 558.5(h) in the event that there is evidence to indicate that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed.

The reporting associated with NADAs and related submissions is necessary to ensure that new animal drugs are in compliance with section 512(b)(1) of the FD&C Act. We use the information collected to review the data, labeling, and manufacturing controls and procedures to evaluate the safety and effectiveness of the proposed new animal drug.

Description of Respondents: Respondents include persons developing, manufacturing, and/or researching new animal drugs.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.1 and 514.6; applications and amended applications ..	182	0.05	9	212	1,908
514.1(b)(8) and 514.8(c)(1); ² evidence to establish safety and effectiveness	182	0.10	18	90	1,620
514.5(b), (d), (f); requesting presubmission conferences ...	182	0.49	89	50	4,450
514.8(b); manufacturing changes to an approved application	182	1.40	255	35	8,925
514.8(c)(1); labeling and other changes to an approved application	182	0.05	9	71	639
514.8(c)(2) and (3); labeling and other changes to an approved application	182	0.43	78	20	1,560
514.11; submission of data, studies, and other information	182	0.09	16	1	16
558.5(i); requirements for liquid medicated feed	182	0.01	2	5	10
Form FDA 356V	182	2.92	531	5	2,655

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹—Continued

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Use of veterinary master files during all phases of product development (including product development that precedes the establishment of an INAD file or the submission of a NADA)	15	1	15	20	300
Total			1,022		22,083

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach to assessing antimicrobial concerns as part of the overall preapproval safety evaluation.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our previous estimates. However, as discussed, we have separately estimated the burden of the “Use of veterinary master files during all phases of product development (including product development that precedes the establishment of an INAD file or the submission of a NADA)” in table 1, row 10. We base our estimate of the total annual responses for the use of veterinary master files on such uses initiated during calendar year 2018. We base our estimate of the hours per response upon our experience with the respondents’ use of veterinary master files. We estimate that the time it takes to compile information and submit it to a veterinary master file will vary from 1 to 50 hours, depending on the complexity of the information; therefore, we are estimating on average the burden per response to be 20 hours. Accordingly, we report an additional 300 burden hours and 15 total annual responses in row 10. We are also correcting several rounding errors that were made in our last request for OMB approval. Correcting these rounding errors reduces our previously reported total burden hours and total responses. Thus, our estimated burden for the information collection reflects a net overall increase of 124 hours and a corresponding increase of 14 responses.

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02479 Filed 2–14–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation

AGENCY: Health Resources and Services Administration (HRSA), the Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: HHS is hereby giving notice that the Advisory Council on Blood Stem Cell Transplantation (ACBSCT) has been renewed. The effective date of the renewed charter is February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Walsh, Executive Secretary, ACBSCT, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857. Phone: 301–443–6839; email: rwalsh@hrsa.gov.

SUPPLEMENTARY INFORMATION: Relevant statutes are Public Law 109–129 as amended by Public Law 111–264; 42 U.S.C. 274k; and Section 379 of the Public Health Service Act. The Council is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

ACBSCT advises and makes recommendations to the Secretary of Health and Human Services (Secretary) on matters related to the activities of the C.W. Bill Young Cell Transplantation Program and the National Cord Blood Inventory Program. One of its principal functions shall be to provide consolidated, comprehensive sources of expert, unbiased analysis and recommendations to the Secretary on the latest advances in the science of blood stem cell transplantation.

ACBSCT may meet up to three times during the fiscal year. The charter renewal for ACBSCT was approved on February 7, 2019. The filing date is February 19, 2019. Renewal of the

ACBSCT charter authorizes the Council to operate until February 19, 2021.

A copy of the ACBSCT charter is available on the ACBSCT website at: https://bloodcell.transplant.hrsa.gov/about/advisory_council/index.html. A copy of the charter can also be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is <http://www.facadatabase.gov/>.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2019–02399 Filed 2–14–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Retail Pharmacy Interest in Utilization of Innovative Educational Technology To Increase Human Papillomavirus (HPV) Vaccination Rates in Rural Areas

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This request for information (RFI) is issued for informational and planning purposes only. This RFI is not a solicitation; nor does it commit the Department of Health and Human Services (HHS) to issue a solicitation, make any award, or pay any costs associated with responding to this announcement.

The RFI is being issued by the National Vaccine Program Office (NVPO) of the U.S. Department of Health and Human Services. The NVPO is located in the Office of the Assistant Secretary for Health (ASH), Office of the Secretary (OS), U.S. Department of Health and Human Services (HHS). The NVPO provides strategic leadership and

management, policy scholarship and recommendations, and encourages collaboration and coordination among federal agencies and other stakeholders whose mission is to reduce the burden of preventable infectious disease through immunization. NVPO offers thorough reporting, unbiased advice and expertise to other agencies in identifying and responding to gaps in the vaccine system.

Prevention of cancers associated with Human Papillomavirus (HPV) infections continues to be a public health challenge in the United States. Vaccination is an effective, primary medical intervention for prevention of infection from these viruses. Despite this, HPV vaccination series completion rates remain low nationwide, with adolescents living in rural communities (per census definition of <50,000 population) having a significantly lower HPV vaccination coverage when compared to their urban or suburban counterparts.

In accordance with policy recommendations from the National Vaccine Advisory Committee and efforts to promote HPV-vaccination coverage in rural areas, NVPO is seeking information on the level of interest of retail pharmacies in utilizing innovative educational models for both providers and customers to increase HPV-vaccination rates in rural areas.

DATES: Information from retail pharmacies with greater than 100 stores in geographic areas considered to be rural by the census definition (<50,000 population) should submit responses to this RFI as described in the addresses section below no later than midnight, 12:00 a.m. EDT on February 25, 2019.

ADDRESSES: Responses should be submitted in Portable Document Format (PDF) only and be sent via email to nvpo@hhs.gov. The name(s) of all PDF files uploaded should begin with "NVPO_RFI_Pharmacy" followed by the organization name and the sequential number of the file, if more than one file is submitted. All submissions responsive to this RFI must be made as indicated above. Mailed paper submissions will not be reviewed.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 690-5566; email: nvpo@hhs.gov.

SUPPLEMENTARY INFORMATION: Responses to this RFI should be in the format outlined below. Primary responses should be limited to no more than 30 pages, 12 point, Times New Roman font, using a minimum of one-inch margins.

Supplementary material may be included in appendices and will not count toward the page limitation.

Section 1—General Information

Responses to this RFI should include (1) the organization's full name, (2) headquarters location, and (3) a description of interest level in utilizing innovative educational models for both providers and customers to increase HPV vaccine series completion and thereby lower vaccine preventable HPV-associated cancers.

Section 2—Qualifications and Experience

Provide a description of corporate experience in developing and/or implementing innovative educational models for both (1) retail pharmacy providers, and (2) customers as part of health messaging, *i.e.* to increase vaccination rates.

Section 3—Recommendations for Execution

Provide recommendations or lessons learned while developing and/or implementing an innovative educational model for retail pharmacy providers and customers to increase HPV-vaccination rates.

Section 4—Likelihood of Participation

Comment on the likelihood of your firm to submit a proposal for the utilization of innovative educational technology to increase HPV vaccination rates in rural areas.

Companies are invited to respond to this request for information if they meet at least three of the following criteria:

1. Are a national retail pharmacy with greater than 100 stores in geographic areas considered to be rural by the census definition (<50,000 population)
2. Are a national employer
3. Have an immunization provider (*i.e.* nurse, pharmacist, physician) on site in their stores
4. Stores must stock and administer Human Papillomavirus (HPV) vaccine
5. Have existing virtual reality (VR) platform employee training in place
6. Have both brick-and-mortar locations and a website by which consumers can make purchases
7. Have existing patient/consumer health education campaigns
8. Have a least one site with the designation of 'Centers of Excellence in Specialized Pharmacy Care'

Responders should include point-of-contact information including email and postal mailing address.

Responses to any of the above areas are welcome; respondents are not

required to address all the issues identified in the request. Public release of the data submitted is governed by the Freedom of Information Act (<https://www.hhs.gov/foia/>). Response to the RFI will not be returned.

Dated: February 1, 2019.

Tammy Beckham,

Acting Director, National Vaccine Program Office.

[FR Doc. 2019-02548 Filed 2-14-19; 8:45 am]

BILLING CODE 4150-44-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee; Allergy, Immunology, and Transplantation Research Committee (AITC) September 2019 Council.

Date: June 13-14, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892-9834, (240) 669-5060, james.snyder@nih.gov.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee; Allergy, Immunology, and Transplantation Research Committee (AITC) January 2020 Council.

Date: October 24-25, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5060, james.snyder@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02426 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel, SBIR Grants Review.

Date: March 19–20, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 1078, 6701 Democracy Blvd., Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Democracy Blvd., Rm 1078, Bethesda, MD 20892, 301–594–7319, khanr2@csr.nih.gov.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel, Rare Neurological Diseases.

Date: April 2, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Conference Room 206,

6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, livingsc@mail.nih.gov.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel, Rare Diseases.

Date: April 8, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Room 1037, 6701 Democracy Blvd., Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center For Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, livingsc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02441 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–NS–18–041: Discovery of Biomarkers, Biomarker Signatures, and Endpoints for Pain.

Date: March 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, cbackman@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: March 12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, kostrikr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 19–059: Global Noncommunicable Diseases and Injury Across the Lifespan (R21).

Date: March 12, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, karen.nieveslugo@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Metabolic Reprogramming to Improve Immunotherapy.

Date: March 12, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, chatterm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02440 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

Date: February 25–26, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Michael H. Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435-0910, chaitinm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02416 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–18–008: NIH Director's New Innovator Award Review (DP2).

Date: March 18–19, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, 301-435-1787, srikanth.ranganathan@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Synapses, Neurodegeneration and Signaling.

Date: March 18, 2019.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vanessa S Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402-3726, boycevs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–727: Molecular Profiles and Biomarkers of Food and Nutrient Intake.

Date: March 19, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, gary.hunnicutt@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: March 20–21, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301-435-1047, kkrishna@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Immune Responses and Vaccines to Non-HIV Microbial Infections.

Date: March 21, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301-435-1221, andrea.keane-myers@nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Immunopathogenesis and Vaccine Development Study Section.

Date: March 21–22, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301-443-5779, prasads@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell and Molecular Biology.

Date: March 21–22, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Amy Kathleen Wernimont, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, 301-827-6427, amy.wernimont@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; A18-037: Halting TB Transmission in HIV-Endemic and other High-Transmission Settings.

Date: March 21, 2019.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435-1150, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment, Signaling and Circuitry.

Date: March 21, 2019.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, sultanaa@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assay, Diagnostics and Animal Model Development.

Date: March 22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, Washington, DC, 2350 M Street NW, Washington, DC 20037.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 240-762-3076, susan.gillmor@nih.gov (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2019.

Sylvia L. Neal,

Program Officer, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02403 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Molecular Atlas of Lung Development Program (LungMAP).

Date: April 3, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301-827-7953, kristen.page@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Conference Grants in Support of Heart, Lung and Blood Research.

Date: April 4-5, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301-435-0291, stephanie.webb@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI TOPMed: Omics Phenotypes of Heart, Lung, and Blood Disorders (X01).

Date: April 5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda One Bethesda Metro Center Bethesda, MD 20814.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, susan.sunnarborg@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Loan Repayment Program Review.

Date: April 9-11, 2019.

Time: April 09, 2019, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Time: April 10, 2019, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Time: April 11, 2019, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301-827-7992, stephanie.webb@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R61/R33).

Date: April 10, 2019.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301-827-7913, creazzotl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R33).

Date: April 10, 2019.

Time: 12:30 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301-827-7913, creazzotl@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02411 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 17, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute Shady Grove, East Wing, Seminar Room 110, 9609 Medical Center Drive, Rockville, MD 20850.

Contact Person: Sheila A. Prindiville, MD, MPH Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240-276-6173 prindivs@mail.nih.gov.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 6, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute Shady Grove, East Wing, Conference, Room TE406, 9609 Medical Center Drive, Rockville, MD 20850.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240-276-6173, prindivs@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NCI Shady Grove has instituted stringent procedures for entrance into the NCI Shady Grove building. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02472 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: April 11, 2019.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: Welcome and Chairman's Remarks, NCI Updates, Legislative Update, Budget Update, and Director's Update.

Place: National Institutes of Health, 31 Center Drive, Building 31, 11A01, Bethesda, MD 20892.

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive Building 31, Room 10A28, Bethesda, MD 20892, 240-781-3360, williaam@mail.nih.gov.

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: June 05, 2019.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: Welcome and Chairman's Remarks, NCI Updates, Legislative Update, Budget Update, and Director's Update.

Place: National Institutes of Health 31 Center Drive, Building 31, 11A01, Bethesda, MD 20892.

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive Building 31, Room 10A28, Bethesda, MD 20892, 240-781-3360, williaam@mail.nih.gov.

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: September 09, 2019.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: Welcome and Chairman's Remarks, NCI Updates, Legislative Update, Budget Update, and Director's Update.

Place: National Institutes of Health, 31 Center Drive, Building 31, 11A01, Bethesda, MD 20892.

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 240-781-3360, williaam@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02470 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Conference Grants.

Date: March 5, 2019/

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM1, 989, 6701 Democracy Blvd., Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: M. Lourdes Ponce, Ph.D., Scientific Review Officer Office of Scientific Review, National Center For Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, 301-594-9459, lourdes.ponce@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02417 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee MID-B September 2019.

Date: September 24–25, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2676, ebuczko1@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02419 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 20–21, 2019.

Open: June 20, 2019, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 20, 2019, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894, Closed: June 21, 2019, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301-827-4281, joyce.backus@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library, Assistance, National Institutes of Health, HHS).

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02412 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DCC for Diabetic Foot Consortium.

Date: March 29, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892-2542, (301) 594-8898, barnardm@extra.nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02476 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member

Conflict: Epidemiology and Genetic Epidemiology.

Date: March 6, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-408-9436, fungai.chanetsa@nih.hhs.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ocular Surface, Cornea, Anterior Segment Glaucoma and Refractive Error.

Date: March 14, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437-0911, kramerkm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: AIDS and AIDS-related applications.

Date: March 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, Bethesda, MD 20892, 301-451-5953, tuoj@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, Population and Public Health Approaches to HIV/AIDS Study Section.

Date: March 14-15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street, Georgetown, DC 20037.

Contact Person: Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301-435-1137, guerriej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Disease Prevention and Management, Risk Reduction and Health Behavior Change

Date: March 14-15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Michael John McQuestion, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301-480-1276, mike.mcquestion@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.

Date: March 14-15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301-480-9069, cbackman@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Hematology.

Date: March 14-15, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301-806-7314, shahb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

Date: March 14, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300-6541, boulaymg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cognition and Perception.

Date: March 14, 2019.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301-500-5829, sechu@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Bacterial Pathogenesis and Virulence.

Date: March 14, 2019.

Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301-435-1167, pandya@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA-RM-18-026, Limited Competition: Data Management and Resource Repository (DMRR) on Extracellular RNA.

Date: March 14, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, balasundaramd@csr.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02415 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special

Emphasis Panel; R13 Support for Conferences and Scientific Meetings.

Date: April 3, 2019.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984/287-3288, varsha.shukla.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIEHS Loan Repayment Program 2019 (LRP).

Date: April 12, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Keystone Building, Room 3094, 530 Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984/287-3288, varsha.shukla.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; U01 Special Emphasis Panel on Telomere Length Measures and Environmental Exposures Review Meeting.

Date: May 2, 2019.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Hilton Garden Inn Durham, Southpoint Chatham Ballroom, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, Room 3171, Research Triangle Park, NC 27709, 919/541-0670, worth@niehs.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; U24 Telomere Research Network SEP Review Meeting.

Date: May 2, 2019.

Time: 12:30 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Durham, Southpoint Chatham Ballroom, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541-0670, worth@niehs.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and

Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02431 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee (CLTR).

Date: June 20-21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892-7924, 301-827-7912, copeka@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02410 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Mental Health; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Clinical Trials: Effectiveness of Treatment, Preventive, and Services Interventions.

Date: April 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW, Washington, DC 20001.

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301-451-2356, gavinevanskm@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Computational Approaches for Validating Dimensional Constructs of Relevance to Psychopathology (R01).

Date: April 2, 2019.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building, (NSC) 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892-9608, 301-443-4525, steinerr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02477 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 16-121: Early-Stage Preclinical Validation of Therapeutic Leads for Diseases of Interest to the NIDDK.

Date: March 15, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892-7892, (301) 402-6297, pileggia@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 16-121: Early-Stage Preclinical Validation of Therapeutic Leads for Diseases of Interest to the NIDDK.

Date: March 15, 2019.

Time: 6:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301 435-2514, riverase@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02406 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 10-12, 2019.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Steven M Holland, MD, Ph.D., Chief, Laboratory of Clinical Infectious Diseases, National Institutes of Health/ NIAID, Hatfield Clinical Research Center, Bethesda, MD 20892-1684, 301-402-7684, sholland@mail.nih.gov.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 9-11, 2019.

Time: 10:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health 50, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Steven M Holland, MD, Ph.D., Chief, Laboratory of Clinical Infectious Diseases, National Institutes of Health/ NIAID, Hatfield Clinical Research Center, Bethesda, MD 20892-1684, 301-402-7684, sholland@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02424 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: "Treatment of Acute Lymphoblastic Leukemia, T-Cell Lymphoma, and Non-Small Cell Lung Cancer Using the 4A10 Antibody and Fragments Thereof"

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patent Applications listed in the Supplementary Information section of this notice to Fannin Partners L.L.C., ("Fannin") of Houston, Texas.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before March 4, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Lauren Nguyen-Antczak, Sr. Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, Rm. 1E530, MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702 Telephone: (240)-276-5530; Facsimile: (240)-276-5504 Email: lauren.nguyen-antczak@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

Entitled "IL-7R-alpha Specific Antibodies for Treating Acute Lymphoblastic Leukemia"

(1) U.S. Provisional Patent Application No. 62/238,612, filed October 7, 2015, corresponding to NIH Ref. No. E-247-2015/0-US-0;

(2) International Patent Application No. PCT/US2016/055957, filed October 7, 2016, corresponding to NIH Ref. No. E-247-2015/0-PCT-02;

(3) Australian Patent Application No. 2016-335750, filed October 7, 2016, corresponding to NIH Ref. No. E-247-2015/0-AU-03;

(4) Canadian Patent Application No. 2997809, filed October 7, 2016, corresponding to NIH Ref. No. E-247-2015/0-CA-04;

(5) European Patent Application No. 16784678.1, filed October 7, 2016, corresponding to NIH Ref. No. E-247-2015/0-EP-05;

(6) U.S. Patent Application No. 15/760,193, filed March 14, 2018, corresponding to NIH Ref. No. E-247-2015/0-US-07;

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be where patent applications are filed and the field of use may be limited to "Treatment of acute lymphoblastic leukemia, T-cell lymphoma, and non-small cell lung cancer using the 4A10 antibody and fragments thereof". Additional licensable fields of use are available.

The subject technology is directed to monoclonal antibodies (mAb) specific for the alpha chain of the interleukin 7 receptor (IL-7R α), and corresponding antigen binding fragments, bispecific antibodies, antibody drug conjugates, and encoding nucleic acid thereof. Specifically developed mAbs include those called "4A10" and "2B8". In certain embodiments, the 4A10 antibody can be administered to treat acute lymphoblastic leukemia, particularly those that arise from aberrations in T-cell lineages.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the

Freedom of Information Act, 5 U.S.C. 552.

Dated: February 6, 2019.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2019-02442 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of The Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: June 13, 2019.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: NIH Director's Report, ACD Working Group Reports, Other Business of the Committee.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: June 14, 2019.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: ACD Working Group Reports, Other Business of the Committee.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301-496-4272, Woodgs@od.nih.gov.

Name of Committee: Advisory Committee to the Director, National Institutes of Health

Date: December 12, 2019.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: NIH Director's Report, ACD Working Group Reports, Other Business of the Committee.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: December 13, 2019.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: ACD Working Group Reports, Other Business of the Committee.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301-496-4272, Woodgs@od.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://acd.od.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02433 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: March 11, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, ruvinsr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology of Retina and Lens.

Date: March 11, 2019.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301-402-4179, thomas.cho@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: March 14-15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Zoe Fisherman's Wharf, 425 North Point St, San Francisco, CA 94133.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, Jan.Li@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02408 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Structural-Functional Cell Biology.

Date: March 25, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301-451-3388, seldens@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: March 28, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435-1214, pinkusl@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02422 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator—Initiated Clinical Trial Planning Grant (R34).

Date: March 19, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G40, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, pmehrotra@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02423 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 8, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Building, 35 Convent Drive, Building 35 Bethesda, MD 20892.

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W302, Bethesda, MD 20892–9750, 240–276–5664, tondravim@mail.nih.gov.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: July 9, 2019.

Time: 9:00 a.m. to 3:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Building, 35 Convent Drive, Building 35 Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D. Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W414, Bethesda, MD 20892–9750, 240–276–5664 wojcikb@mail.nih.gov.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: November 4, 2019.

Time: 9:00 a.m. to 3:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D. Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W414, Bethesda, MD 20892–9750, 240–276–5664, wojcikb@mail.nih.gov.

Name of Committee: Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: November 5, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W302, Bethesda, MD 20892–9750, 240–276–5664, tondravim@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02471 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

Date: March 7–8, 2019.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Crystal City, 1800 Jefferson Davis Highway, Alexandria, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–827–7949, mintzerk@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02409 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Office of AIDS Research Advisory Council.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 28, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: The fiftieth meeting of the Office of AIDS Research Advisory Council (OARAC) will include the OAR Director's Report; updates from the DHHS HIV/AIDS Treatment and Prevention Guidelines; updates from HIV/AIDS Advisory Councils for NCI, NIDA, NIMH and NIAD; the FY2021 NIH Plan for HIV-Related Research; other HIV/AIDS research activities across selected NIH Institutes; and public comment.

Place: National Institutes of Health, Conference Room 1D13, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Office of AIDS Research, National Institutes of Health, Ofc of the Director, 5601 Fishers Lane, Room 2E61, MSC-9834 Bethesda, MD 20892-9834, (240) 669-5046, jay.radke@nih.gov.

Name of Committee: Office of AIDS Research Advisory Council.

Date: June 27, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: OAR Director's Report; updates from the DHHS HIV/AIDS Treatment and Prevention Guidelines; updates from HIV/AIDS Advisory Councils for NCI, NIDA, NIMH and NIAD; the FY2021 NIH Plan for HIV-Related Research; other HIV/AIDS research activities across selected NIH Institutes; and public comment.

Place: National Institutes of Health, 1D13, 5601 Fishers Lane, Rockville, MD 20852.

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer Office of AIDS Research, National Institutes of Health, Ofc of the Director, 5601 Fishers Lane, Room 2E61, MSC-9834 Bethesda, MD 20892-9834, (240) 669-5046, jay.radke@nih.gov.

Name of Committee: Office of AIDS Research Advisory Council.

Date: November 7, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: OAR Director's Report; updates from the DHHS HIV/AIDS Treatment and Prevention Guidelines; updates from HIV/AIDS Advisory Councils for NCI, NIDA, NIMH and NIAD; the FY2021 NIH Plan for HIV-Related Research; other HIV/AIDS research activities across selected NIH Institutes; and public comment.

Place: National Institutes of Health, 1D13, 5601 Fishers Lane, Rockville, MD 20852.

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Office of AIDS Research, National Institutes of Health, Ofc of the Director, 5601 Fishers Lane, Room 2E61, MSC-9834 Bethesda, MD 20892-9834, (240) 669-5046, jay.radke@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.oar.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02432 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee.

Date: June 13-14, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 2nd Ave., San Diego, CA 92101.

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial, Bethesda, MD 20892, 301-594-4859, latarsha.carithers@nih.gov.

Name of Committee: NIDCR Special Grants Review Committee.

Date: October 17-18, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial, Bethesda, MD 20892, 301-594-4859, latarsha.carithers@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02428 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Language and Communication.

Date: March 18, 2019.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402-4411, tianbi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Receptors, Channels and Circuits.

Date: March 28, 2019.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, sultanaa@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: U.S. Tobacco Control Policies to Reduce Health Disparities.

Date: March 29, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301-496-0726, prenticekj@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Chemosensory Systems.

Date: April 1, 2019.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301-435-1766, bennettc3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurotoxicology and Alcohol.

Date: April 2, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301-435-1766, bennettc3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RM18-009: NIH Transformative Research Awards (R01) Review.

Date: April 3, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301-996-7702, jacobsonrh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RM18-009: NIH Transformative Research Awards (R01) Review.

Date: April 3, 2019.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301-996-7702, jacobsonrh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Technologies to Non-Invasively Monitor Genome Edited Cells in Vivo (RFA-RM-18-025).

Date: April 3, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435-8363, wrightds@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Novel Approaches to Safe, Non-Invasive, Real Time Assessment of Human Placenta Development and Function Across Pregnancy.

Date: April 4, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Clara M. Cheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301-435-1041, chengc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Topics in Developmental Biology.

Date: April 4, 2019.

Time: 12:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5201, MSC 7840, Bethesda, MD 20892, 301-435-1175, berestm@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-RM-16-005: 2019 Pioneer Award Review.

Date: April 9-11, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435-2037, mackj2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 18-731 Cancer Workforce Diversity.

Date: April 17, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-827-6009, lin.reigh-yi@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 11, 2019.

Sylvia L. Neal,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02421 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Environmental Health Sciences; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Evaluation of the R01 Victor (TT) Environmental Research Grant Applications.

Date: March 2, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Durham/Southpoint, 7840 NC-751, Durham, NC 27713.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC-30/ Room 3170 B, Research Triangle Park, NC 27709, 919/541-7556.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIEHS for Independence Awards K01, K23, K99/R00 Grant Applications.

Date: March 28, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 919-541-2824, laura.thomas@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to

Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02429 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases: Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Collaborative Cross (CC) Mouse Model Generation and Discovery of Immunoregulatory Mechanisms (R21 Clinical Trial Not Allowed).

Date: March 20–25, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/ Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC 9823, Rockville, MD 20892, (240) 669-5060, james.snyder@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02425 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Human Genome editing tools and Platforms to Evaluate Adverse Effects.

Date: March 8, 2019.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Methodo Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301-827-7088, methodo.bacanamwo@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-RM-18-024: Expanding the Human Genome Engineering Repertoire (U01).

Date: March 8, 2019.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301-357-9112, smirnov@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bone and Cartilage.

Date: March 19, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116,

MSC 7814, Bethesda, MD 20892, 301-496-8551, ingrahamrh@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biological Chemistry and Macromolecular Biophysics Chemistry.

Date: March 20–21, 2019.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301-435-1728, rادتک@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: March 20, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301-237-9870, xuguofen@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Structure-Based Discovery of Ligands for Opioid Receptors.

Date: March 21, 2019.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451-1323, assamunu@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation

Date: March 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-435-1784, gorshkoi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Career Development and Pathways to Independence Award In Tobacco Regulatory Research.

Date: March 22, 2019.

Time: 12:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435-0628, newmanjh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.

Date: March 25, 2019.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, kumarra@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Musculoskeletal and Oral Sciences, Imaging, Surgery and Informatics.

Date: March 26–27, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210, chaudhaa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA—RM-18-023: Innovative Technologies to Deliver Genome Editing Machinery to Disease-Relevant Cells and Tissues.

Date: March 26, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2022, Bethesda, MD 20892, 301-827-2864, maskerib@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02420 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Award for Sustaining Outstanding Achievement in Research (SOAR) SEP.

Date: February 20, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Crina Frincu, Ph.D., Scientific Review Office, Scientific Review Branch, NIDCR, 6701 Democracy Boulevard, Bethesda, MD 20817, Crina.frincu@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis.

Date: February 25, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDCR Conference Room 602, Democracy One, 602, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, zhanggu@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Studies SEP.

Date: March 7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: The Darcy Hotel, 1515 Rhode Island Ave NW, Washington, DC 20005.

Contact Person: Crina Frincu, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Suite 662, Bethesda, MD 20892, cfrincu@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02427 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Notice is hereby given of a meeting of the HEAL (Helping to End Addiction Long-term) Multi-Disciplinary Working Group.

The meeting will be open to the public as indicated below. Seating is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Working Group: HEAL Multi-Disciplinary Working Group.

Date: March 4, 2019.

Open: 8:30 a.m. to 5:00 p.m.

Agenda: Provide an introduction to the Helping to End Addiction Long-Term (HEAL) Initiatives research plan and introduction to multiple projects.

Videocast: For those not able to attend in person, this meeting will be live webcast at <http://videocast.nih.gov/>.

Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Contact Person: Rebecca G. Baker, Ph.D., Office of the Director, National Institutes of Health, 1 Center Drive, Room 103A, Bethesda, MD 20892, (301) 402-1994, Rebecca.baker@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitors must go through a security check at the building entrance to receive a visitor's badge. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Office of the Director for the NIH HEAL InitiativeSM home page: <https://www.nih.gov/research-training/medical-research-initiatives/heal-initiative> where an agenda and any additional information for the meeting will be posted when available.

Dated: February 9, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02405 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: September 10, 2019.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301-594-4929, irelanc@mail.nih.gov.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 10-11, 2019.

Open: September 10, 2019, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 10, 2019, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 11, 2019, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301-594-4929, irelanc@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nlm.nih.gov/od/bor/bor.html, where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for viewing at <http://videocast.nih.gov> on September 10-11, 2019. (Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02414 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, HIV Coinfections and HIV Associated Cancers Study Section.

Date: March 18–19, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, montalve@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

Date: March 18–19, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, ltopol@mail.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

Date: March 19–20, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Georgetown Marriott, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218,

MSC 7852, Bethesda, MD 20892, 301–806–6596, rubertm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Perception and Cognition Research to Inform Cancer Image Interpretation.

Date: March 19, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, kellya2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–18–010: NIH Director's Early Independence Award Review.

Date: March 20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, ryansj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Secondary Analyses of Existing Datasets in Heart, Lung and Blood Diseases and Sleep Disorders.

Date: March 20, 2019.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gniesha Yvonne Dinwiddie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, dinwiddiegy@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–329: Countermeasures Against Chemical Threats (CounterACT) Research Centers of Excellence (U54).

Date: March 21, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Lord Baltimore, 20 West Baltimore Street, Baltimore, MD 21201.

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, geoffreys@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems: Basic Mechanisms of Health Effects.

Date: March 21–22, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, diramig@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Applications in Ethology and Substance Abuse.

Date: March 21, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, kellya2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–333: Understanding the Early Development of the Immune System.

Date: March 21, 2019.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, chenhui@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: CounterACT-Countermeasures against Chemical Threats.

Date: March 22, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Lord Baltimore, 20 West Baltimore Street, Baltimore, MD 21201.

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, geoffreys@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02438 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business; Biological Chemistry, Biophysics and Assay Development.

Date: March 6–7, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Vonda K. Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, smithvo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genomics and Animal/Biological Resource Facilities.

Date: March 8, 2019.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, 301 451 1327, dettinle@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Continuous Submission Applications.

Date: March 13, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, moongabs@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business; Medical Imaging.

Date: March 14–15, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.

Contact Person: Leonid V. Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, tsapl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business; Orthopedic, Skeletal Muscle and Oral Sciences.

Date: March 14, 2019.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Washington North Hotel, 4095 Powder Mill Road, Beltsville, MD 20705.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences AREA (R15) Review.

Date: March 15, 2019.

Time: 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton College Park North Hotel, 4095 Powder Mill Road, Beltsville, MD 20705.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, ansaria@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Rheumatology and Dermatology.

Date: March 15, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, kumarra@csr.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02404 Filed 2–14–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows.

Adeno-Associated Viruses In Inner-Ear Therapeutics

Available for licensing and commercial develop are intellectual property rights associated with adeno-associated viral vector (AAV) mediated inner-ear gene therapy can prevent and reverse hair cell damage to improve auditory function. Hearing loss is associated with age or trauma induced inner ear hair cell damage or hereditary genetic defects in the inner ear development. The delivery of functional copies of mutated or functionally impaired genes can restore hearing. An effective gene therapy requires a powerful delivery vehicle such as a viral vector with high infection efficiency to the inner ear cells. The inventors identified the recombinant AAV2.7m8 virus with modified capsid protein with a high viral vector efficiency for delivering genetic therapeutic payloads to multiple cell types of mammalian inner ear.

Potential Commercial Applications

—Promising gene therapy vector for the treatment of hearing loss and dizziness.

—AAV2.7m8 can be used for human inner ear gene therapy for various diseases of the ear.

Development Stage

In vivo data in mice available.

Inventors: Wade Chien (NIDCD) and Jean Bennett (UPenn).

Intellectual Property: HHS Reference No. E-004-2019-0; U.S. Provisional Patent Application No. 62/784,306 filed December 21, 2018.

Licensing Contact: Michael Shmilovich, Esq. CLP; 301-435-5019; shmilovm@mail.nih.gov.

Dated: February 5, 2019.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2019-02443 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Environmental Health Sciences; Notice of Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Environmental Health Sciences Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: June 4-5, 2019.

Closed: June 4, 2019, 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: June 4, 2019, 11:00 a.m. to 5:00 p.m.
Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: June 5, 2019, 8:30 a.m. to 12:00 p.m.
Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (984) 287-3249, collman@niehs.nih.gov.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 10-11, 2019.

Closed: September 10, 2019, 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building, U.S. Environmental Protection Agency, Conference Room 111, 109 TW Alexander Drive, Research Triangle Park, NC 27709.

Open: September 10, 2019, 11:00 a.m. to 5:00 p.m.

Agenda: Discussion of program policies and issues.

Place: NIEHS/National Institutes of Health, Building, U.S. Environmental Protection Agency, Conference Room 111, 109 TW Alexander Drive, Research Triangle Park, NC 27709.

Open: September 11, 2019, 8:30 a.m. to 12:00 p.m.

Agenda: Discussion of program policies and issues.

Place: NIEHS/National Institutes of Health, Building, U.S. Environmental Protection Agency, Conference Room 111, 109 TW Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709 (984) 287-3249, collman@niehs.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.niehs.nih.gov/about/boards/naehsc/>

index.cfm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02430 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Library of Medicine Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 24-25, 2019.

Open: October 24, 2019, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 24, 2019, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 25, 2019, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301-827-4281, joyce.backus@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 11, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02413 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to Space available. Individuals who plan to attend and need special assistance, such as sign Language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 10–11, 2019.

Closed: September 10, 2019, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), North Bethesda, 6001 Executive Boulevard, Rockville, MD 28052.

Open: September 11, 2019, 8:00 a.m. to 1:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institutes of Health, Neuroscience Center Building (NSC), North Bethesda, 6001 Executive Boulevard, Rockville, MD 28052.

Contact Person: Robin Barr, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, barr@nia.nih.gov.

Any interested person may file written comments with the committee by forwarding the Statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nigms.nih.gov/About/Council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02475 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Eye Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 21, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Grant applications and/or proposals.

Place: NIH, National Eye Institute, 6700B Rockledge Drive, Conference Room A/B/C, Bethesda, MD 20817.

Contact Person: Anne E. Schaffner, Ph.D., Acting Director, Division of Extramural Affairs, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301-435-8156, aes@nei.nih.gov.

Name of Committee: National Advisory Eye Council.

Date: October 4, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Grant applications and/or proposals.

Place: NIH, National Eye Institute, 6700B Rockledge Drive, Conference Room A/B/C, Bethesda, MD 20817.

Contact Person: Anne E. Schaffner, Ph.D., Acting Director, Division of Extramural Affairs, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301-435-8156, aes@nei.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nei.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 12, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02473 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Center Core Grant for Vision Research Applications (P30).

Date: March 20, 2019.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 6700 B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301-451-2020, jeanetteh@mail.nih.gov.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Pathway to Independence (K99) Grant Applications.

Date: March 28-29, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr. Ste 3400, Bethesda, MD 20892-9300, (301) 451-2020, aes@nei.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02439 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to Space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 21-22, 2019.

Closed: May 21, 2019, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 60, Lecture Hall, One Cloister Court, Bethesda, MD 20892.

Open: May 22, 2019, 8:00 a.m. to 12:45 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institutes of Health, Building 60, Lecture Hall, One Cloister Court, Bethesda, MD 20892.

Contact Person: Robin Barr, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496-9322, barr@nia.nih.gov.

Any interested person may file written comments with the committee by forwarding the Statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nigms.nih.gov/About/Council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 11, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-02474 Filed 2-14-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-0879]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0088

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: 1625-0088, Voyage

Planning for Tank Barge Transits in the Northeast United States. 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 March 18, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0879] 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.

(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: 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–2018–0879], and must be received by March 18, 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: 1625–0088.

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 54606, October 30, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request
Title: Voyage Planning for Tank Barge Transits in the Northeast United States.
OMB Control Number: 1625–0088.

Summary: The information collection requirement for a voyage plan serves as a preventive measure and assists in ensuring the successful execution and completion of a voyage in the First Coast Guard District. This rule (33 CFR 165.100) applies to primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo.

Need: Section 311 of the Coast Guard Authorization Act of 1998, Public Law 105–383, 46 U.S.C. 70034, and 46 U.S.C. 3719 authorize the Coast Guard to promulgate regulations for towing vessel and barge safety for the waters of the Northeast subject to the jurisdiction of the First Coast Guard District. This regulation is contained in 33 CFR 165.100. The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment failures, or human errors that may lead to accidents.

Forms: None.

Respondents: Owners and operators of towing vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 880 hours to 937 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 7, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–02463 Filed 2–14–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0035]

Towing Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Amended meeting notice; location and date change.

SUMMARY: The dates and location of Towing Safety Advisory Committee meeting that was scheduled for February 20 and 21, 2019, and announced in the **Federal Register** on February 4, 2019 have been changed. The meetings have been rescheduled to March 12 and 13, 2019, and they will be held at the Double Tree by Hilton Hotel Miami Airport and Convention Center in Miami, FL.

DATES: The subcommittees of the Towing Safety Advisory Committee will

meet on Tuesday, March 12, 2019, from 8 a.m. to 5 p.m. to conduct work-group sessions. The full Committee will meet on Wednesday, March 13, 2019, from 8 a.m. to 5 p.m.

These meetings may end early if the subcommittees or the Committee has completed its business, or the meetings may be extended based on the number of public comments.

ADDRESSES: All meetings will be held at the Double Tree by Hilton Hotel Miami Airport and Convention Center, 711 NW 72nd Avenue, Miami, FL 33126;

Hotel website: https://doubletree3.hilton.com/en/hotels/florida/doubletree-by-hilton-hotel-miami-airport-and-convention-center-MIAMADT/index.html?SEO_id=GMB-DT-MIAMADT. For access to the docket or to read documents or comments related to this meeting, including the February notice of the meeting (84 FR 1480, February 4, 2019) which lists the agenda, go to <http://www.regulations.gov>; insert USCG–2019–0035 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Scheffler, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, Stop 7509, Washington, DC 20593–7509; telephone 202–372–1087, fax 202–372–8382 or email Douglas.W.Scheffler@uscg.mil

Dated: February 8, 2019.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2019–02462 Filed 2–14–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0790]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0006

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 approval for reinstatement, without change, of the following collection of information: 1625–0006, Shipping Articles. 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 March 18, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0790] 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.

(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: 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–2018–0790], and must be received by March 18, 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: 1625–0006.

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 53642, October 24, 2018) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Shipping Articles.
OMB Control Number: 1625–0006.

Summary: Title 46 United States Code 10302 and 10502 and Title 46 Code of Federal Regulations (CFR) 14.201 requires applicable owners, charterers, managing operators, masters, or individuals in charge to make a shipping agreement in writing with each seaman before the seaman commences employment. Additionally, 46 CFR 14.313 requires shipping companies to submit to the Coast Guard Shipping Articles three years after the article was generated; or submitted by shipping companies that go out of business or merges with another company; or upon request by the Coast Guard. Upon receipt and acceptance, Shipping Articles are transferred and archived at the Federal Records Center in Suitland, Maryland.

Need: This collection provides verification, identification, location and employment information of U.S. merchant mariners to the following: (1) Federal, state and local law enforcement agencies for use in criminal or civil law enforcement purposes, (2) shipping companies, (3) labor unions, (4) seaman's authorized representatives, (5) seaman's next of kin, (6) whenever the disclosure of such information would be in the best interest of the seaman or his/her family.

Forms: CG-705A, Shipping Articles.

Respondents: Shipping companies.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains at 18,000 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: February 7, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019-02464 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2019-0036]

Chemical Transportation Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Chemical Transportation Advisory Committee and its subcommittee will meet in Houston, TX, to discuss committee matters relating to the safe and secure marine

transportation of hazardous materials. All meetings will be open to the public.

DATES:

Meetings: The Chemical Transportation Advisory Committee subcommittee will meet on Wednesday, March 20, 2019, from 9 a.m. to 5 p.m. The full Committee will meet on Thursday, March 21, 2019, from 9 a.m. to 5 p.m. Please note that the meetings may close early if the committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by committee members before the meetings, submit your written comments no later than March 6, 2019.

ADDRESSES: The meeting will be held at United States Coast Guard Sector Houston-Galveston, 13411 Hilliard St. Houston, TX 77034.

Pre-registration Information: Pre-registration is required for access to Sector Houston-Galveston. Foreign nationals participating will be required to pre-register no later than noon on February 13, 2019, to be admitted to the meeting. U.S. citizens participating will be required to pre-register no later than noon on February 20, 2018, to be admitted to the meeting. To pre-register, contact Lieutenant Commander Julie Blanchfield at julie.e.blanchfield@uscg.mil or (202) 372-1419. You will be asked to provide your name, telephone number, email, and company or group with which you are affiliated; if a foreign national, also provide your country of citizenship, passport country, country of residence, place of birth, passport number, and passport expiration date. All attendees will be required to provide a REAL-ID Act-compliant government-issued picture identification card in order to gain admittance to the base. For information on REAL ID and to check the compliance status of your state/territory, please see <https://www.dhs.gov/real-id>.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Alternate Designated Federal Officer as soon as possible using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want committee members to review your comment before the meeting, please submit your comments no later than March 6, 2019. We are particularly interested in comments on the issues in the "Agenda" section below. You must

include "Department of Homeland Security" and docket number USCG-2019-0036. Written comments may also be submitted using Federal eRulemaking Portal at <https://www.regulations.gov>. If you encounter difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may review the Privacy Act and Security Notice for the Federal Docket Management System at <https://www.regulations.gov/privacyNotice>.

Docket Search: For access to the docket to read documents or comments related to this notice, go to <https://www.regulations.gov>, type USCG-2019-0036 in the "SEARCH" box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Julie Blanchfield, Alternate Designated Federal Officer of the Chemical Transportation Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509, Telephone 202-372-1419, Facsimile 202-372-8380, or electronic mail: julie.e.blanchfield@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act*, Title 5 U.S.C., Appendix.

The Chemical Transportation Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to the safe and secure marine transportation of hazardous materials insofar as they relate to matters within the United States Coast Guard's jurisdiction.

Agenda

March 20, 2019

The subcommittee meeting will separately address the following task statement: #13-03—Recommendations on Safety Standards for the Design of Vessels Carrying Liquefied Gas as Cargo.

The task statement and other subcommittee information is located at Homeport at the following address: <https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/ctac/subcommittees-and-working-groups>. The agenda for each will include the following:

- (1) Introductions and review subcommittee task statement.
- (2) Work on assigned tasks mentioned above.

(3) Discuss and prepare any proposed recommendations for the Chemical Transportation Advisory Committee meeting on March 21, 2019.

(4) Public comment period.

(5) Adjournment of meeting.

March 21, 2019

The agenda for the Chemical Transportation Advisory Committee meeting on Thursday, March 21, 2019, is as follows:

(1) Introductions and opening remarks.

(2) Swear in newly appointed committee members, and thank outgoing members.

(3) Review of March 8, 2018, meeting minutes and status of task items.

(4) U.S. Coast Guard Leadership Remarks.

(5) Chairman's and Designated Federal Officer's remarks.

(6) Committee will review, discuss, and formulate recommendations on the following items:

a. Task Statement #13-03: Recommendations on Safety Standards for the Design of Vessels Carrying Liquefied Gas as Cargo.

(7) United States Coast Guard update on International Maritime Organization activities as they relate to the marine transportation of hazardous materials.

(8) Presentation of interest related to safe and secure shipment of hazardous materials.

(9) New business and subcommittee recommendation discussion.

(10) Set next meeting date and location.

(11) Public comment period.

(12) Adjournment of meeting.

A public oral comment period will be held during the subcommittee and the full committee meeting concerning matters being discussed. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

A copy of all meeting documentation will be available at <https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/ctac/full-committee-meetings> no later than March 14, 2019. Alternatively, you may contact Lieutenant Commander Julie Blanchfield as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: February 11, 2019.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2019-02488 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG-2018-0193]

Polar Security Cutter Program; Notice of Availability of Final Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard, as lead agency, announces the availability of the final Programmatic Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for the Polar Security Cutter Program's design, build, and operation of up to six polar security cutters (PSC).

DATES: The U.S. Coast Guard 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 published in the docket at <https://www.regulations.gov/docket?D=USCG-2018-0193> and also on the following U.S. Coast Guard website: https://www.dcms.uscg.mil/Portals/10/CG-9/Acquisition%20PDFs/CG_PSC_Final%20PEIS_05%20Feb%202019.pdf?ver=2019-02-08-121637-803×tamp=1549650805158.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of availability, email Ms. Christine Wiegand, Assistant Program Manager, Polar Security Cutter Program, U.S. Coast Guard; email PIBEnvironment@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR	Code of Federal Regulations
CGC	Coast Guard Cutter
DHS	Department of Homeland Security
EIS	Environmental Impact Statement
FR	Federal Register
NEPA	National Environmental Policy Act
PIBs	Polar Icebreakers
PSCs	Polar Security Cutters

U.S.C. United States Code

Background and Purpose

The Final EIS was prepared in accordance with the requirements of NEPA; the CEQ regulations implementing NEPA (40 CFR 1500-1508); DHS procedures for implementing NEPA (DHS Instruction Manual 023-01-001-01 (series)), U.S. Coast Guard procedures for implementing NEPA (COMDTINST 16475.1(series)); and other applicable DHS and U.S. Coast Guard policies and guidance. A Notice of Intent (NOI) to prepare the EIS was published in the **Federal Register** on April 26, 2018 (83 FR 18319) and the Notice of Availability (NOA) of the Draft EIS was published in the **Federal Register** on August 6, 2018 (83 FR 38317). The U.S. Coast Guard is the lead agency for the proposed action.

The purpose of the proposed action is to design, build, and operate new PSCs to carry out the U.S. Coast Guard's primary missions supported by the current polar icebreaker fleet. Expected missions include Ice Operations, Defense Readiness, Aids to Navigation, Living Marine Resources, Marine Safety, Marine Environmental Protection, Other Law Enforcement, Ports, Waterways, and Coastal Security, and Search and Rescue.

The U.S. Coast Guard's current fleet of PIBs consists of two heavy icebreakers, Coast Guard Cutter (CGC) POLAR STAR and CGC POLAR SEA, and one medium icebreaker, CGC HEALY. The U.S. Coast Guard's heavy icebreakers have both exceeded their designed 30 year service life. The current PSC program acquisition strategy is approved to construct up to three heavy PSCs and may (at a future date) potentially expand to include up to three medium icebreakers, with planned service design lives of 30 years each. The first of these new PSCs is expected to be delivered in 2023. Because the first new PSC would not be operational in the Polar Regions until at least 2023, new information may become available after the completion of this EIS. In that case, supplemental NEPA documentation may, as appropriate, be prepared in support of individual proposed actions. Examples of new information may include, but are not limited to, changes to a species listing status or any other applicable laws and directives, and information regarding mission, training, homeporting, maintenance, and eventual decommissioning of the new PSCs.

In executing its various missions, the U.S. Coast Guard protects the public, the environment, and U.S. economic and security interests in any maritime

region, including international waters and the Nation's coasts, ports, and inland waterways, as required to support national security. Legislation and executive orders assign the U.S. Coast Guard a wide range of responsibilities applicable to Polar Regions. The U.S. Coast Guard derives its authority for the use of icebreaking from several statutes governing execution of its missions. These include: 14 U.S.C. 541 (previously 14 U.S.C. 81)¹ Coast Guard establishment, maintenance, and operation of aids to navigation; 14 U.S.C. 521 (previously 14 U.S.C. 88) Coast Guard saving of life and property; 14 U.S.C. 522 (previously 14 U.S.C. 89) Coast Guard law enforcement; 14 U.S.C. 716 (previously 14 U.S.C. 90) Arctic maritime transportation; 14 U.S.C. 527 (previously 14 U.S.C. 91) controlling anchorage and movement of vessels; 14 U.S.C. 715 (previously 14 U.S.C. 94) conduct oceanographic research; and 14 U.S.C. 701 (previously 14 U.S.C. 141) cooperation with agencies, States, territories, and others. In addition, Executive Order 7521 (Use of Vessels for Icebreaking in Channels and Harbors), 1 FR 2184, Dec. 24, 1936, directs the U.S. Coast Guard to assist in keeping channels and harbors open to navigation by means of icebreaking operations.

In accordance with NEPA, the U.S. Coast Guard prepared an EIS analyzing the potential impacts of up to six new PSCs, as this is the maximum number anticipated to be operational in the Polar Regions under the current PSC program acquisition strategy. A lesser number of icebreakers is expected to result in a similar or reduced impact than what will be discussed and evaluated in the EIS. Potential environmental stressors include acoustic (underwater acoustic transmissions, vessel noise, icebreaking noise, aircraft noise, and gunnery noise), and physical (vessel movement, aircraft or in-air device movement, in-water device movement, icebreaking, and marine expended materials).

The Final EIS has considered three alternatives:

- The No Action Alternative included use of the existing assets to fulfill Coast Guard missions, which are reaching the end of their service lives.
- Alternative 1 (Preferred Alternative) included the design and build up to six polar icebreakers to fulfill mission requirements in the Arctic and Antarctic.

- Alternative 2 included various forms of icebreaker leasing, such as those leases used by the United States Navy, the National Science Foundation, other federal agencies, and the domestic maritime industry, to close the Coast Guard icebreaking capability gap.

The Final EIS addresses potential environmental impacts under each alternative associated with physical, biological, and socioeconomic environmental resources. The analysis addresses direct and indirect impacts, and accounts for cumulative impacts from other foreseeable federal, state, or local activities in the proposed action area. The U.S. Coast Guard conducted a scoping process to identify community concerns and local issues that should be addressed in the EIS, as well as gathered public comments on the Draft EIS following its release in August 2018. The Coast Guard considered the public comments we received when drafting the Final EIS. The changes between the draft EIS and the Final EIS are identified and described in Appendix C of the Final EIS, which can be found at one of the locations in the **ADDRESSES** section.

The Final EIS identifies minor to moderate adverse impacts associated with the proposed action that would be mitigated by the implementation of standard operating procedures and best management practices. An increase in the Coast Guard icebreaking fleet would be beneficial because Coast Guard support would readily be available during an at-sea emergencies to commercial fishing, recreational fishing, transportation and shipping, tourism, and cultural resources and the communities that depend on them. The Final EIS has been distributed to various federal, state, and local agencies, as well as other interested individuals and organizations.

Following a 30-day waiting period, after publication of the NOA in the **Federal Register**, the U.S. Coast Guard will announce its Record of Decision which will be published in the **Federal Register**.

This notice is issued under authority of 5 U.S.C. 552(a).

Timothy J. Connors,

Captain, U.S. Coast Guard, Program Manager, Polar Security Cutter Program.

[FR Doc. 2019-02550 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of the Bog Creek Road Project Final Environmental Impact Statement and Draft Records of Decision

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security and U.S. Forest Service, Department of Agriculture.

ACTION: Notice of availability of Final Environmental Impact Statement and Draft Records of Decision concerning the repair and maintenance of Bog Creek Road and closure of certain roads within the Blue-Grass Bear Management Unit in the Selkirk Mountains in Boundary County, Idaho; public review.

SUMMARY: U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests (IPNF) announce the availability of the Bog Creek Road Project Final Environmental Impact Statement (EIS) and the agencies' respective Draft Records of Decision (ROD). The Final EIS identifies and assesses potential impacts upon the environment of: Repairing and maintaining an approximately 5.6-mile section of the existing Bog Creek Road, which is located in the Selkirk Mountains in Boundary County, Idaho, within approximately two miles of the Canadian border, on land within the Blue-Grass Bear Management Unit (BMU) that is managed by the Forest Service; and closing for motorized use additional roads within the Blue-Grass BMU to comply with the *Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones* (Access Amendment) and to reduce road density in the Blue-Grass BMU.

The CBP Draft ROD addresses the decision to approve the funding for and implement the repair and maintenance of the Bog Creek Road. The Forest Service Draft ROD addresses the decisions to: Approve CBP's repair and maintenance of Bog Creek Road for administrative use by CBP, the Forest Service, and others; implement the motorized closure of seasonally restricted Forest Service roads to establish grizzly bear core area habitat and meet Access Amendment standards for the Blue-Grass BMU; and implement

¹ The Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115-282), enacted December 4, 2018, redesignated many existing sections within Title 14 of the United States Code.

changes in the seasonally restricted designation of roads in the Blue-Grass BMU. This document provides instructions for filing objections to the Forest Service's Draft ROD.

DATES: The CBP Draft ROD will be available until April 1, 2019. CBP will issue a Final ROD at about the same time the Forest Service issues a Final ROD but no sooner than April 1, 2019.

The Forest Service Draft ROD will be available for 45 days after the date of publication in the newspaper of record, the Coeur d'Alene Press. Objections to the Forest Service Draft ROD must be filed within 45 days of such publication and filed in the manner specified in the **ADDRESSES** section of this document.

After the 45-day objection period ends and after the Forest Service responds in writing to and addresses any objections, the Forest Service will issue a Final ROD. For detailed instructions on how to file an objection, see the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES:

For Obtaining Copies of the Final EIS and Draft Records of Decision: Electronic copies of the Final EIS, CBP Draft ROD, and Forest Service Draft ROD are available at <https://www.fs.usda.gov/project/?project=41296> and <https://www.cbp.gov/document/environmental-assessments/bog-creek-road-project-environmental-impact-statement>.

CD-ROM and print copies are available by sending a request to Joe Zidron at Joseph.Zidron@cbp.dhs.gov or 949-643-6392 or at the following Forest Service locations:

- The IPNF Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene, Idaho;
- Sandpoint Ranger District, 1602 Ontario Street, Sandpoint, Idaho;
- Bonners Ferry Ranger District, 6286 Main Street, Bonners Ferry, Idaho; and
- Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho.

For Filing Objections to the Forest Service Draft ROD: Objections to the Forest Service Draft ROD, including attachments, must be filed via fax, mail, express delivery, messenger service, email, or hand-delivery to: Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804. Hand-delivery hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding holidays. FAX to (406) 329-3411, Email: appeals-northern-regional-office@fs.fed.us. For fax and email, include "Bog Creek Road Project Objection" in the subject line. Acceptable formats for electronic objections are text or html email, Adobe

portable document format (pdf), and formats viewable in Microsoft Office applications.

FOR FURTHER INFORMATION CONTACT: Joe Zidron, CBP, Border Patrol and Air and Marine Program Management Office, by telephone at 949-643-6392, or email at joseph.zidron@cbp.dhs.gov or Kim Pierson, Deputy Forest Supervisor, Forest Service, IPNF, by telephone at 208-765-7220, or email at kpierson@fs.fed.us. Persons who require assistance accessing information should contact the U.S. Department of Agriculture's (USDA) Target Center at 202-720-2600 (voice and TDD) or contact USDA through the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Proposed Action

U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests (IPNF) (collectively the Agencies) are proposing a road repair, maintenance, and motorized closure project in the Continental Mountain area of the Idaho Panhandle National Forests within the Bonners Ferry and Priest Lake Ranger Districts.¹ The project has two objectives: (1) To provide safe east-west access for administrative use (as explained below) to this section of the U.S.-Canada border across the Selkirk Mountains, and (2) to meet grizzly bear motorized access standards within the Blue-Grass Bear Management Unit (BMU) of the Selkirk Grizzly Bear Recovery Zone in order to comply with the *Forest Plan Amendments for Motorized Access Zones (Access Amendment)*.

The Bog Creek Road Project Final EIS has been prepared to identify and assess potential impacts from the Proposed Action on the environment. The Proposed Action was developed through collaborative efforts between CBP, the Forest Service, and the public, and was designed to meet the goals and objectives established for the project while meeting as many other resource needs as possible. The Proposed Action consists of three components: (1) Road repair and maintenance of Bog Creek Road and change in motorized use designation; (2) change in motorized use designation for Blue Joe Creek Road;

¹ This proposal is being made pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the President's Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500-1508), DHS Directive 023-01, Revision 01, and Instruction 023-01-001-01, Revision 01, and CBP and Forest Service NEPA guidelines.

and (3) motorized closure of selected seasonally restricted Forest Service roads. The Proposed Action is described below.

The first component is the repair and maintenance of an approximately 5.6-mile section of Bog Creek Road (Forest Service Road [FSR] 1013), which would be conducted to allow the road to meet Forest Service road maintenance level 2 standards and would generally allow access for high-clearance vehicles. Maintenance level 2 roads are described in Forest Service Handbook 7709.58. Bog Creek Road is currently designated as a seasonally restricted road. Motorized use by the Forest Service, CBP, law enforcement, and other administrative agencies is permitted between April 1 and November 15 (active bear year) but is limited to 57 administrative vehicle round trips per active bear year. After road repair activities, the road designation would change to *administrative open* (as-needed administrative motorized access). Under the *administrative open* road designation, Bog Creek Road would be open to as-needed administrative motorized access but not open to the public for motorized travel.

Repair and maintenance would consist of grading and resurfacing areas of the road that have been heavily eroded by surface water flows, filling potholes, and removing protruding boulders. Repair would also include installation of six new culverts and replacement of six of the existing 67 corrugated metal pipe culverts located along the length of the roadway because they have partially rusted through, otherwise exceeded their usable life, or do not meet current design standards for width and capacity. The most intensive repair would occur at Spread Creek, where a culvert failure and road washout have made the road completely impassable. The road would not be widened, but limited areas that no longer meet minimum width requirements may require cut and fill work to achieve the desired road operating and safety standards. Trees and other vegetation within the roadway and to either side would be grubbed or cut back to facilitate safe vehicle passage.

The second component is the change in motorized designation of Blue Joe Creek Road (FSR 2546). Blue Joe Creek Road extends from the eastern terminus of the Bog Creek Road, running 5.5 miles alongside Blue Joe Creek, to the Continental Mine property. Blue Joe Creek Road is currently designated as seasonally restricted, and motorized access is limited to 57 vehicle round trips per active bear year. Under the

Proposed Action, the current seasonal restrictions that limit the number of motorized administrative trips along Blue Joe Creek Road would be removed. The road would be designated as *administrative* open, which would allow for as-needed administrative motorized trips. This change in designation, when combined with the Bog Creek Road designation change, would allow for administrative trips by private property owners to access their property within the Blue-Grass BMU.

The final component is the motorized closure of selected seasonally restricted Forest Service roads. Under the Proposed Action, approximately 26 miles of seasonally restricted Forest Service roads would be closed to all wheeled motorized use within the Blue-Grass BMU. Closing the roads would allow the Forest Service to meet the requirements of at least 55 percent of the BMU as core area habitat, and no more than 26 percent of the BMU having a total motorized route density (TMRD) greater than 2 miles per square mile, as specified in the Access Amendment. The means by which motorized road closure would take place would vary by site and would include both decommissioning and long-term storage. Decommissioning involves permanently removing a road from the Forest Service transportation system. Long-term storage involves rendering a road undrivable. Roads stored for creation of grizzly bear core habitat would remain stored for a minimum of ten years. On-the-ground road work is typically the same or very similar for decommissioning and long-term storage, as both are intended to prevent future failures and erosion hazards. Both methods may involve one or a combination of the following treatments: Fully or partially recontouring the road prism, ripping the road surface, removing culverts and recontouring stream crossings, planting and seeding, mulching, or slashing disturbed areas.

All roads proposed for motorized closure under the Proposed Action are currently classified as seasonally restricted Forest Service roads. Administrative motorized use of these roads is permitted between April 1 and November 15; non-motorized public access on these roads is permitted year-round.

Alternatives

The Agencies developed alternatives to the Proposed Action described above and disclose the environmental impacts of these alternatives in the Final EIS. In addition to the No-Action Alternative (Alternative 1) and the Proposed Action

(Alternative 2), there are three other action alternatives analyzed: Modified Proposed Action (Alternative 3—Preferred Alternative), Blue-Grass BMU West–East Open Access (Alternative 4), and Alternative 4 Modified. Alternative 4 Modified was developed for inclusion in the Final EIS in response to collaborative stakeholder alternative suggestions received during the Draft EIS public comment period.

Alternative 1, the No-Action Alternative, represents the effects of not implementing the proposed repair and maintenance of Bog Creek Road and motorized closure of seasonally restricted Forest Service roads, while taking into account the effects of other past, ongoing, and reasonably foreseeable activities occurring in the area. This alternative proposes that no repair and maintenance activities would occur on the 5.6-mile section of Bog Creek Road and that the 26 miles of seasonally restricted Forest Service roads would continue to be available for motorized use in accordance with seasonal access restrictions. There would be no change in Forest Service management of the roads and CBP activities in the Blue-Grass BMU. Although the Forest Service would continue to examine road closure options to meet Access Amendment requirements within the Blue-Grass BMU under the No-Action Alternative, compliance with the Access Amendment standards would not change until currently unidentified other viable road closure options are implemented.

Alternative 3 is a modified version of the Proposed Action that would close a different set of seasonally restricted Forest Service roads to motorized access. It is the Agencies' preferred alternative. The repair and maintenance activities proposed for Bog Creek Road and the *administrative open* designation for Bog Creek Road and Blue Joe Creek Road are the same as described under the Proposed Action. Under Alternative 3, approximately 25 miles of Forest Service roads would be closed to all motorized use by the Forest Service within the Blue-Grass BMU. This would allow the Forest Service to meet the Access Amendment grizzly bear core area habitat requirement of 55 percent and the TMRD requirement of 26 percent. Two of the nine roads proposed for motorized road closure under Alternative 3 would be different from the roads proposed for closure under the Proposed Action. These roads were included in this alternative because closing these roads would create more grizzly bear core area habitat in upper Grass Creek, a place that has been

heavily and continuously used by grizzly bears since at least the 1980s. All roads proposed for motorized closure under Alternative 3 are classified as seasonally restricted Forest Service roads. Administrative motorized use of these roads is permitted between April 1 and November 15. Non-motorized public access on these roads is permitted year-round.

Alternative 4 is a modified version of the Proposed Action that would open Bog Creek Road and roads along the eastern approach to Bog Creek Road to public motorized access. Under Alternative 4, Bog Creek Road repair and maintenance and the motorized closure of seasonally restricted Forest Service roads would be identical to the Proposed Action. After repair of Bog Creek Road is completed, Alternative 4 would designate the 5.6 miles of the repaired Bog Creek Road as open for public motorized access year-round. However, winter motorized snowmobile use by the public is currently not allowed on Bog Creek Road as a result of rulings by the United States District Court of the Eastern District of Washington on November 7, 2006, and February 27, 2007, relating to recovery of Selkirk Mountain woodland caribou and the potential impacts of snowmobile use within the recovery area. Approximately 4.5 miles of Blue Joe Creek Road would change to an *administrative open* designation (as-needed administrative motorized access). Additionally, the designation of roads along the eastern approach to Bog Creek Road (1 mile of FSR 2546 and FSRs 1011, 636, and 1009) would also change from the current seasonally restricted designation (limited motorized access) to an open road designation (public motorized access) to allow for continuous public motorized travel across the Blue-Grass BMU. Under Alternative 4, the same 26 miles of seasonally restricted Forest Service roads as identified in the Proposed Action would be closed to all wheeled motorized use within the Blue-Grass BMU.

Alternative 4 Modified was developed for inclusion in the Final EIS in response to collaborative stakeholder alternative suggestions received during the Draft EIS public comment period. As described below, Alternative 4 Modified is similar in many respects to Alternative 4, but includes a few variations. Alternative 4 Modified incorporates the same road repair and maintenance activities, the same eastern approach roads to Bog Creek Road, and the same administrative motorized use and winter motorized snowmobile use that are described in Alternative 4.

However, Alternative 4 Modified includes a variation of the open public access on the Bog Creek Road and eastern approach roads presented in Alternative 4. It also includes a different combination of roads proposed for motorized closure as compared to the alternatives analyzed in the Draft EIS. Specifically, the roads would only be open to unlimited public motorized access from July 15 to August 15. Outside of this period, motorized access to the roads would be available for administrative use only. The gate at the east end of FSR 1009 would be left open from July 15 to August 15, and gates would be constructed at closed roads that intersect the open eastern approach roads to prevent unauthorized access. Because there would be open public motorized access for this one-month period, the road would be designated as open.

The Final EIS addresses the potential impacts from the Proposed Action and alternatives. Evaluations were conducted on various resources present in the Blue-Grass BMU, including: threatened and endangered species, wildlife, fish, special-status plants, water, soils, recreation, and heritage.

Forest Service Pre-decisional Administrative Review ("Objection") Process

This project is subject to 36 CFR part 218, subparts A and B of the Forest Service's Project-level Pre-decisional Administrative Review Process. Pursuant to these regulations, only those who provided timely and specific written comments regarding the proposed project during a comment period are eligible to file an objection with the Forest Service. Issues raised in an objection must be based on previously submitted specific written comments regarding the project and attributed to the objector unless the objection is based on new information that arose after the designated opportunities for comments.

Objections to the Forest Service's Draft ROD, including attachments, must be filed by regular mail, fax, email, hand-delivery, express delivery, or messenger service with the reviewing officer within 45 days of the date of publication of the legal notice for the objection process. This **Federal Register** notice is not the legal notice for purposes of the Forest Service's objection process. Instead, a separate legal notice will be published in the newspaper of record, the Coeur d'Alene Press. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an objection, and those wishing

to object should not rely upon dates or timeframe information provided by any other source. It is the objector's responsibility to ensure timely filing of a written objection with the reviewing officer and to retain evidence of timely filing, as determined by the following indicators: The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period; the agency's electronically generated posted date and time for email and facsimiles; the shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or the official agency date stamp showing receipt of hand delivery. For emailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of receipt of the objection, it is the sender's responsibility to ensure timely filing by other means.

Objections to the Forest Service Draft ROD must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process. Incorporation of documents by reference is not allowed, except for the following list of items that may be referenced by including date, page, and section of the cited document, along with a description of its content and applicability to the objection: All or any part of a Federal law or regulation; Forest Service directives and land management plans; documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection; and comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments were requested by the responsible official. All other documents must be included with the objection.

At a minimum, an objection to the Forest Service Draft ROD must include the following: Objector's name and address as defined in 36 CFR 218.2, with a telephone number, if available; signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection); when multiple names are listed on an objection, identification of the lead objector; verification of the identity of the lead objector must be provided upon request or the reviewing officer will designate a lead objector; the name of the proposed

project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented; a description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and a statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunities for comment.

Prior Public Involvement

Public scoping for the Bog Creek Road repair and maintenance proposal was initially conducted by CBP in February and March of 2013. Information gathered from the initial scoping effort was used to inform the Agencies about what level of NEPA analysis was necessary to evaluate the proposed project. The initial scoping information included the possibility that road closures may become part of the proposed action, but did not include specific motorized road closure information. Using initial scoping information, the Agencies determined that the NEPA analysis would be conducted through an EIS process.

The Notice of Intent (NOI) stating that CBP and the Forest Service planned to prepare an EIS for the Bog Creek Road Project was published in the **Federal Register** on April 27, 2016 (81 FR 24839). The NOI asked for public comment on the proposal from April 27 to May 27, 2016. The Proposed Action described in the NOI included both repair and maintenance of Bog Creek Road and motorized road closures of specific road segments in the Blue-Grass BMU. In total, 17 comment letters were received during the NOI scoping period.

All scoping comments submitted during the initial scoping and NOI scoping were included in issue development for the current EIS process. A Scoping Report that summarizes both scoping efforts is available for review as part of the project record. The Scoping Report is available on the CBP public website: <https://www.cbp.gov/document/environmental-assessments/bog-creek->

road-project-environmental-impact-statement.

The Draft EIS publication was announced in the **Federal Register** on June 1, 2018 (83 FR 25472). The 45-day public comment period started the day following publication and was extended 15 additional days. See notice published in the **Federal Register** on July 20, 2018 (83 FR 34601). Interested parties submitted specific written comments by email, in person, and U.S. Postal Service mail. The Agencies also held public meetings in Bonners Ferry, Priest Lake, and Sandpoint, Idaho to provide opportunities for the public to understand the proposed action and alternatives. One hundred seven comment letters were received on the Draft EIS. More information on the public comment process and agency responses to Draft EIS public comments are presented in Appendix C of the Final EIS.

Public Involvement in Historic Preservation Activities Under Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to review all actions which may affect resources listed on, or eligible for, the National Register of Historic Places in order to take into account the effects of their undertakings on historic properties. In the **Federal Register** notice published on June 1, 2018 (83 FR 25472), and in accordance with the NHPA, the Agencies requested public comments on historic preservation issues related to the road repair and closure of roads for motorized use. This process also afforded the Idaho State Historic Preservation Officer and tribal governments a reasonable opportunity to comment on such undertakings. The Agencies received one comment specific to historic preservation issues.

Next Steps

After the Forest Service objection filing period is complete, the Forest Service reviewing officer will issue a written response to the objections. The written response will set forth the reasons for the response, and may include instructions to the Forest Service's responsible official. If more than one objection is filed, the reviewing officer may consolidate objections and issue one or more responses.

The Forest Service's responsible official will then address all concerns and instructions identified in the written response. Thereafter, the Forest Service will issue the

Forest Service Final ROD. CBP will issue the CBP Final ROD at about the same time but no sooner than April 1, 2019. The Forest Service Final ROD and the CBP Final ROD will be made available to the public through an NOA in the **Federal Register**.

Dated: February 8, 2019.

Karl H. Calvo,

Assistant Commissioner, Office of Facilities and Asset Management, Office of Enterprise Services, U.S. Customs and Border Protection.

Jeanne Higgins,

Forest Supervisor, Idaho Panhandle National Forests, U.S. Forest Service.

[FR Doc. 2019-02282 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1903]

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 May 16, 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-1903, to Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at 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.

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/preliminaryflood-hazarddata> 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
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Saline County, Arkansas and Incorporated Areas
Project: 13-06-1179S Preliminary Date: March 29, 2016 and October 30, 2018

City of Benton	Municipal Complex, 114 South East Street, Benton, AR 72015.
City of Bryant	Public Safety Building, 312 Roya Lane, Bryant, AR 72022.
City of Haskell	Haskell City Hall, 2520 Highway 229, Benton, AR 72015.
Town of Bauxite	City Hall, 6055 Stanley Circle, Bauxite, AR 72011.
Unincorporated Areas of Saline County	Saline County Complex, 215 North Main Street, Suite 7, Benton, AR 72015.

Lebanon County, Pennsylvania (All Jurisdictions)
Project: 15-03-0142S Preliminary Date: August 20, 2018

Borough of Cleona	Borough Hall, 140 West Walnut Street, Cleona, PA 17042.
Borough of Cornwall	Borough Hall, 36 Burd Coleman Road, Cornwall, PA 17016.
Borough of Jonestown	Borough Building, 295 South Mill Street, Jonestown, PA 17038.
Borough of Mount Gretna	Borough Hall, 101 Chautauqua Drive, Mount Gretna, PA 17064.
Borough of Palmyra	Municipal Center, 325 South Railroad Street, Palmyra, PA 17078.
City of Lebanon	Municipal Building, 400 South 8th Street, Lebanon, PA 17042.
Township of Annville	Township Hall, 36 North Lancaster Street, Annville, PA 17003.
Township of Bethel	Bethel Township Office, 3015 South Pine Grove Street, Fredericksburg, PA 17026.
Township of East Hanover	East Hanover Township Office, 1117 School House Road, Annville, PA 17003.
Township of Heidelberg	Heidelberg Township Municipal Building, 111 Mill Road, Schaefferstown, PA 17088.
Township of Jackson	Jackson Township Municipal Building, 60 North Ramona Road, Myerstown, PA 17067.
Township of Millcreek	Millcreek Township Office, 81 East Alumni Avenue, Newmanstown, PA 17073.
Township of North Annville	North Annville Township Building, 1020 North Route 934, Annville, PA 17003.
Township of North Cornwall	North Cornwall Township Municipal Building, 320 South 18th Street, Lebanon, PA 17042.
Township of North Lebanon	North Lebanon Township Office, 725 Kimmerlings Road, Lebanon, PA 17046.
Township of North Londonderry	North Londonderry Township Municipal Center, 655 East Ridge Road, Palmyra, PA 17078.
Township of South Annville	South Annville Township Community Building, 1042 Horseshoe Pike, Lebanon, PA 17042.
Township of South Lebanon	South Lebanon Township Building, 1800 South Fifth Avenue, Lebanon, PA 17042.
Township of South Londonderry	South Londonderry Municipal Township Building, 27 Market Street, Palmyra, PA 17078.
Township of Swatara	Swatara Township Building, 68 Supervisors Drive, Jonestown, PA 17038.
Township of Union	Union Township Building, 3111 State Route 72, Jonestown, PA 17038.
Township of West Cornwall	West Cornwall Township Building, 73 South Zinns Mill Road, Lebanon, PA 17042.
Township of West Lebanon	West Lebanon Township Building, 322 North 22nd Street, Lebanon, PA 17046.

[FR Doc. 2019-02563 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4413-DR; Docket ID FEMA-2019-0001]

Alaska; 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 Alaska (FEMA-4413-DR), dated January 31, 2019, and related determinations.

DATES: The declaration was issued January 31, 2019.

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 January 31, 2019, 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 certain areas of the State of Alaska resulting from an earthquake on November 30, 2018, 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 Alaska.

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 Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be 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, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The Municipality of Anchorage, Matanuska-Susitna Borough, and Kenai Peninsula Borough for Individual Assistance.

The Municipality of Anchorage, Matanuska-Susitna Borough, and Kenai Peninsula Borough for Public Assistance.

All areas within the State of Alaska 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. 2019-02565 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1902]

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 May 16, 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-1902, 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.

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; or visit the FEMA Map Information eXchange (FMIX) online at 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.

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/preliminaryflood-hazarddata> 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
Scioto County, Ohio and Incorporated Areas Project: 12-05-8919S Preliminary Date: April 13, 2018	
City of Portsmouth	City Hall, 728 Second Street, Portsmouth, OH 45662.
Unincorporated Areas of Scioto County	Scioto County Floodplain Office, 602 7th Street, Portsmouth, OH 45662.
Village of New Boston	Village Office, 3980 Rhodes Avenue, New Boston, OH 45662.

[FR Doc. 2019-02564 Filed 2-14-19; 8:45 am]
BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Technical Assistance Request and Evaluation

AGENCY: Emergency Communications Division (ECD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; Extension, 1670-0023.

SUMMARY: DHS CISA ECD will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this ICR in the **Federal Register** on Tuesday, October 9, 2018 at 83 FR 50675 for a 60-day public comment period. 0 comments were received by DHS. The purpose of this notice is to allow an

additional 30 days for public comments. To provide greater transparency, CISA is making an adjustment from the 60 day notice to show all related costs in the 30 day notice.

DATES: Comments are encouraged and will be accepted until March 18, 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 OMB Desk Officer, Department of Homeland Security and sent via electronic mail to dhsdeskofficer@omb.eop.gov. All submissions must include the words "Department of Homeland Security" and the OMB Control Number 1670-0023—Technical Assistance Request and Evaluation.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email

comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kendall Carpenter at 703.705.6376 or at Kendall.Carpenter@HQ.DHS.GOV.

SUPPLEMENTARY INFORMATION: The Emergency Communications Division (ECD) formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 571 *et seq.*, as amended, provides emergency communications-related technical assistance at no charge to State, regional, local, and tribal government officials. To receive this technical assistance, stakeholders must submit a request form identifying their priorities. In order for ECD to assess the

value of the services it provides through technical assistance, an evaluation form is also requested of those receiving technical assistance.

ECD uses the Technical Assistance Request Form (DHS Form 9043) to identify the number and type of technical assistance services needed by the State, territory, local, and tribal agencies. This information enables ECD to plan and align resources accordingly. ECD considers each request based on the priority indicated by the State, as well as the anticipated impact of the service offering on the implementation of the Statewide Communications Interoperability Plan (SCIP) and the applicability to National Emergency Communications Plan (NECP). The evaluation form (DHS Form 9042) is completed by stakeholders at the completion of ECD technical assistance services and enables ECD to assess the quality of technical assistance services provided and, in a holistic fashion, measure the value of the services. The information collected through these evaluations is used by ECD for continued improvement planning.

Approximately 100 percent of request and evaluation forms are submitted electronically by logging into the portal at <https://www.dhs.gov/ictapscip-resources>. From the website, users are able to select the appropriate form, either the Technical Assistance Requests (DHS Form 9043) and/or the TA Evaluation forms (DHS Form 9042), to complete as a fillable PDF. Each form is then submitted by email to either TARrequest@hq.dhs.gov or TAevaluations@hq.dhs.gov, respectively.

The changes to the collection since the previous OMB approval include: updating the web address, decreasing the estimated number of responses, decreasing the burden time, and increasing the cost estimates.

This is a renewal of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: Technical Assistance Request and Evaluation.

OMB Control Number: 1670-0023.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments.

Number of Annualized Respondents: 175.

Estimated Time per Respondent: 0.25 hours.

Total Annualized Burden Hours: 50 hours.

Total Annualized Respondent Opportunity Cost: \$2,072.

Total Annualized Respondent Out-of-Pocket Cost: \$0.

Total Annualized Government Cost: \$3,697.

Scott Libby,

Deputy Chief Information Officer.

[FR Doc. 2019-02569 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

Telecommunications Service Priority System

AGENCY: Emergency Communications Division (ECD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; Extension, 1670-0005.

SUMMARY: DHS CISA ECD will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DHS previously published this ICR in the **Federal Register** on Wednesday, October 17, 2018 for a 60-day public comment period. 0 comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments. To provide greater transparency, CISA is making an adjustment from the 60 day notice to show all related costs in the 30 day notice.

DATES: Comments are encouraged and will be accepted until March 18, 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 OMB Desk Officer, Department of Homeland Security and sent via electronic mail to dhsdeskofficer@omb.eop.gov. All submissions must include the words "Department of Homeland Security" and the OMB Control Number 1670-0005—Telecommunications Service Priority System.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Deborah Bea at 703.705.6302 or at deborah.bea@HQ.DHS.GOV.

SUPPLEMENTARY INFORMATION:

Telecommunications Service Priority (TSP) is authorized by E.O. 12472, E.O. 13618 and 47 CFR part 64. The DHS Emergency Communications Division (ECD) uses the TSP Program to authorize national security and emergency preparedness organizations to receive priority treatment for vital voice and data circuits or other telecommunications service, under National Security or Emergency Preparedness telecommunications (NS/EP). The TSP Program provides service vendors a Federal Communications Commission (FCC) mandate to prioritize requests by identifying those services critical to national security and emergency preparedness. A TSP assignment ensures that it will receive priority attention by the service vendor before any non-TSP service.

Four broad categories serve as guidelines for determining whether a circuit or telecommunications service is eligible for priority provisioning or restoration. TSP service user organizations may be in the Federal, State, local, or tribal government, critical infrastructure sectors in industry, non-profit organizations that perform critical NS/EP functions, or

foreign governments. Typical TSP service users are responsible for the command and control functions critical to management of and response to NS/EP situations, particularly during the first 24 to 72 hours following an event.

Information to request a priority, to obtain a sponsor for requesting a priority, and for other administrative requirements of the program is required from any person or organization having an NS/EP service for which they wish priority restoration from the vendor providing the service. Information is also required to allow immediate installation of a new service to support NS/EP requirements. Information is required from vendors to allow the ECD to track and identify the telecommunications services that are being provided priority treatment.

The forms used are the SF314 (Revalidation for Service Users), SF315 (TSP Request for Service Users), SF317 (TSP Action Appeal for Service Users), SF318 (TSP Service Confirmation for Service Vendors), and the SF319 (TSP Service Reconciliation for Service Vendors). The SF314 is for users to request that their existing TSP codes be revalidated for three more years. The SF315 is used to request restoration and/or provisioning for an organization's critical circuits. The SF317 is for organizations to appeal the denial of TSP restoration and/or provisioning. The SF318 is for service vendors to provide circuit ID information associated with TSP codes they've been given by their customers. The SF319 is for service vendors to provide data to the program office in order to reconcile their TSP data with the TSP database. Participants request TSP priorities via email in order to reduce the use of the paper forms. The paper forms will also be available for download via the TSP home page.

There have been no changes to the information being collected. The burden for the SF315 Form has increased due to better estimates, and the annual cost burden to respondents and annual government cost has increased due to increased wage rates and compensation factors.

This is a renewal of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection:
Telecommunications Service Priority System.

OMB Control Number: 1670-0005.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector.

Number of Annualized Respondents: 38,666.

Estimated Time per Respondent: 0.64 hours.

Total Annualized Burden Hours: 10,354 hours.

Total Annualized Respondent Opportunity Cost: \$503,681.

Total Annualized Respondent Out-of-Pocket Cost: \$0.

Total Annualized Government Cost: \$377,036.

Scott Libby,

Deputy Chief Information Officer.

[FR Doc. 2019-02568 Filed 2-14-19; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

Agency Information Collection Activities; New Collection: USCIS Tip Form

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of

respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 16, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615-NEW in the body of the letter, the agency name and Docket ID USCIS-2019-0001. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

- (1) *Online.* Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2019-0001;
- (2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529-2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommès, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message.) Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments: You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2019-0001 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is

offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* USCIS Tip Form.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-1530; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. The USCIS Tip Form will facilitate the collection of information from the public regarding credible and relevant claims of immigration benefit fraud impacting both open adjudications as well as previously approved benefit requests where the benefit remains valid.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-1530 is 55,000 and the estimated hour burden per response is .166 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,130 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

collection: There is no public burden cost associated with this collection.

Dated: February 11, 2019

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019-02381 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0096]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Genealogy Index Search Request and Genealogy Records Request

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 18, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0096 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20

Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 5, 2018, at 83 FR 55393, allowing for a 60-day public comment period. USCIS did not receive any comment(s) in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2006-0013 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Genealogy Index Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1041 and G–1041A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Genealogy Program is necessary to provide a more timely response to requests for genealogical and historical records. Form G–1041 is provided as a convenient means for persons to provide data necessary to perform a search of historical agency indices. Form G–1041A provides a convenient means for persons to identify a particular record desired under the Genealogy Program. The forms provide rapid identification of such requests and ensures expeditious handling. Persons such as researchers, historians, and social scientists seeking ancestry information for genealogical, family history and heir location purposes will use Forms G–1041 and G–1041A.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1041 is 3,847 and the estimated hour burden per response is 1,924 hours. The estimated total number of respondents for the information collection G–1041A is 2,920 and the estimated hour burden per response is 1,460 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,384 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$25,376.

Dated: February 8, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–02370 Filed 2–14–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0080]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: USCIS Case Status Online

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 18, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615–0080 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>.

www.uscis.gov, or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 13, 2018, at 83 FR 46509, allowing for a 60-day public comment period. USCIS received five comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2005–0033 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number (File No. OMB–33); USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, for-profit organizations, and not-for-profit organizations. This system allows individuals or their representatives to request case status of their pending application through the USCIS' website.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection USCIS Case Status Online is 7,020,000 and the estimated hour burden per response is 0.075 hours (4.5 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 526,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$0.

Dated: February 8, 2019.

Samantha L. Deshommnes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019-02374 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0130]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Record of Abandonment of Lawful Permanent Resident Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 18, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden

and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0130 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommnes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 2, 2018, at 83 FR 55198, allowing for a 60-day public comment period. USCIS received two comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2013-0005 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-407; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Lawful Permanent Residents (LPRs) use Form I-407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I-407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-407 is 13,800 and the estimated hour burden per response is .33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,554 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$3,381,000.

Dated: February 8, 2019.

Samantha L. Deshommnes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019-02375 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0132]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: AABB Accredited Laboratory Testing; Rapid DNA Prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA Prototype RapidHIT200 by IntegenX

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 18, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615–0132 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries.

Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on November 27, 2018, at 83 FR 60890, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2014–0002 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* AABB accredited laboratory testing; Rapid DNA prototype Accelerated Nuclear DNA Equipment (ANDE) by NetBio; Rapid DNA prototype RapidHIT200 by IntegenX.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1294 and G–1295; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or

households. USCIS proposes to permit a refugee applicant whose application for refugee status was denied on the basis of lack of credibility to establish a claimed biological relationship to a derivative child to submit DNA evidence with the RFR. This will allow individuals who are otherwise unable to prove the claimed relationship to provide potentially credible evidence of the biological relationship.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the Applicant Initiated AABB accredited lab DNA Testing is 60 and the estimated hour burden per response is 6 hours. The estimated total number of respondents for the Standard DNA Testing is 250 and the estimated hour burden per response is 0.05 hours. The estimated total number of respondents for the Rapid DNA Prototype is 250 and the estimated hour burden per response is 0.05 hours. The estimated total number of respondents for the information collection G–1294 is 250 and the estimated hour burden per response is 0.167 hours. The estimated total number of respondents for the information collection G–1295 is 250 and the estimated hour burden per response is 0.167 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 469 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$14,700.

Dated: February 8, 2019.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019–02369 Filed 2–14–19; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0025]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Waiver of Rights, Privileges, Exemptions and Immunities

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 16, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0025 in the body of the letter, the agency name and Docket ID USCIS-2008-0015. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2008-0015;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529-2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at <http://www.regulations.gov> and enter USCIS-2008-0015 in the search box.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-508; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. This form is used by USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-508 is 1,928 and the estimated hour burden per response is .72 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,446 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$15,424.

Dated: February 11, 2019.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2019-02376 Filed 2-14-19; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2018-N118;
FXES1113020000-189-FF02ENEH00]

Draft Safe Harbor Agreement Amendment and Application for an Enhancement of Survival Permit, Tres Rios Project, Phoenix, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application to amend an existing enhancement of survival permit from the City of Phoenix under the Endangered Species Act. The requested amended permit would authorize a change in baseline for the southwestern willow flycatcher, adjust the enrolled land acreage to reflect City land boundaries, and include the yellow-billed cuckoo in the Safe Harbor Agreement and the enhancement of survival permit associated with the City's Tres Rios Water Project. We invite the public to review and comment on the permit application and the associated draft safe harbor agreement amendment (SHA amendment). In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed permit action qualifies for a categorical exclusion. We are accepting comments on the draft SHA amendment, and also on a draft NEPA screening form.

DATES: *Submitting Comments:* We will accept comments received or postmarked on or before March 18, 2019.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Internet:* Download the documents at <https://www.fws.gov/southwest/es/arizona/>.

- *U.S. Mail:* You may receive a CD-ROM or hard copies by mail by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051-2517; calling (602) 242-0210; faxing (602) 242-2513, or emailing FW2_HCP_Permits@fws.gov.

- *In-Person Document Review:* Copies of the documents are also available for public inspection and review, by appointment only, at the Service's Phoenix office (address above) or at the U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6093, Albuquerque, NM 87102; (505) 248-6401.

Submitting Comments: To submit written comments, please use one of the following methods, and note that your comment is in reference to the "Draft SHA Amendment/Tres Rios Project in Phoenix, Arizona":

- *U.S. Mail:* Field Supervisor, Phoenix office (address above).

- *Fax:* 602-242-2513.

- *Email:* FW2_HCP_Permits@fws.gov.

We request that you submit comments only by the methods above. Generally, we will post any personal information you provide us (see Public Availability of Comments).

FOR FURTHER INFORMATION CONTACT: Jeff Humphrey, Field Supervisor, 602-242-0210 (telephone).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receipt of the City of Phoenix's application to amend an existing enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested amended permit would allow for the City of Phoenix to continue operation and maintenance activities associated with the Tres Rios Project, including maintenance of vegetation, roads, trails, water delivery systems, flood control capacity, and storm water facilities. The project area runs from approximately 91st Avenue downstream to the confluence of the Gila and Salt Rivers, and then west along the Gila River to approximately El Mirage Road in Maricopa County, Arizona. The amendment to the permit would make three changes to the original permit: (1) Add the yellow-billed cuckoo (*Coccyzus americanus*) to

the City's 2014 SHA; (2) adjust the enrolled acreage from the 927 acres specified in the 2014 SHA to 924 acres, in order to rectify boundary errors; and (3) adjust covered species baselines to reflect the 2015 habitat assessment, which better represents the area and its conservation benefit. The baseline for the Yuma Ridgway's (clapper) rail (*Rallus obsoletus* [= *longirostris*] *yumanensis*) remains at 5 acres. The southwestern willow flycatcher (*Empidonax traillii extimus*) baseline changed from 22.5 acres to a zero baseline, and we determined that the yellow-billed cuckoo baseline is 6 acres.

The applicant plans to continue operation and maintenance activities associated with the Tres Rios Project, Tempe Reach, including maintenance of vegetation, roads, trails, water delivery systems, flood control capacity, and storm water facilities. Initial implementation of the Tres Rios Project was a cooperative project between the applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 924 acres of native riparian and wetland vegetation along the lower Salt and Gila Rivers in Maricopa County, Arizona.

We invite the public to review and comment on the permit amendment and the associated draft safe harbor agreement amendment (draft SHA amendment). In accordance with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements, we have determined that the proposed action qualifies for a categorical exclusion. We are accepting comments on the permit application, draft SHA amendment, and draft NEPA screening form, which supports using a categorical exclusion.

Background

Enhancement of survival permits issued for safe harbor agreements encourage non-Federal landowners, including non-Federal operators holding easements on private lands, to implement conservation measures for habitat that is, or is likely to develop into, suitable habitat for listed species, by assuring landowners/operators that they will not be subjected to increased property use restrictions if suitable habitat develops and the covered species is detected in the future. Application requirements and enhancement of survival permit issuance criteria for safe harbor agreements are provided under section 10(c) of the ESA and its implementing regulations from the Code of Federal Regulations (CFR) at 50 CFR 17.22 and the NEPA and its implementing regulations at 40 CFR 1506.6.

Proposed Action

The proposed action is the Service's issuance of an amended permit to the City of Phoenix for covered activities in the permit area for up to 50 years, pursuant to section 10(a)(1)(A) of the ESA. The amended permit would cover "take" of the yellow-billed cuckoo associated with covered activities occurring within the permit area.

The draft SHA amendment commits the City of Phoenix to implement conservation measures to improve habitat for the covered species on Tres Rios lands while allowing for covered activities within the project area to continue.

To meet ESA section 10(a)(1)(A) permit requirements for the proposed amendment, the applicant developed and proposes to implement the SHA amendment, which describe the actions the City of Phoenix has agreed to undertake to improve habitat within the Tres Rios project area.

Expected benefits include, but may not be limited to improvement of riparian habitat that can be used by covered species and other native fauna, limiting the amount of new disturbance to riparian habitat, and improving public environmental education.

We will evaluate the permit amendment request along with associated documents and comments we receive to determine whether the permit amendment meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the draft SHA amendment and amend the associated permit. We will fully consider all comments we receive during the public comment period, and we will not make our final decision until after the comment period ends.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act (5 U.S.C. 552), NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or

businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy Lueders,

Regional Director, Southwest Region,
Albuquerque, New Mexico.

[FR Doc. 2019-02549 Filed 2-14-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Gulf of Mexico Outer Continental Shelf Region-Wide Oil and Gas Lease Sale 252

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale

SUMMARY: On Wednesday, March 20, 2019, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Region-wide Oil and Gas Lease Sale 252 (GOM Region-wide Sale 252), in accordance with the provisions of the Outer Continental Shelf Lands Act (OCSLA), and the implementing regulations issued pursuant thereto. The GOM Region-wide Sale 252 Final Notice of Sale (NOS) package contains information essential to potential bidders.

DATES: BOEM will hold GOM Region-wide Sale 252 at 9:00 a.m. on Wednesday, March 20, 2019. All times referred to in this document are Central Standard Time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days prior to the sale, or from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 19, 2019, the day before the lease sale. For more information on bid submission, see Section VII, "Bidding Instructions," of this document.

ADDRESSES: Bids will be accepted prior to the bid receipt deadline at 1201 Elmwood Park Boulevard, New Orleans, Louisiana. Public bid reading for GOM

Region-wide Sale 252 will be held at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, but the venue will not be open to the general public, media, or industry during bid opening or reading. Bid opening will be available for public viewing on BOEM's website at www.boem.gov via live-streaming video beginning at 9:00 a.m. on the date of the sale. BOEM will also post the results on its website after bid opening and reading are completed. Interested parties may download the Final NOS package from BOEM's website at <http://www.boem.gov/Sale-252/>. Copies of the sale maps may be obtained by contacting the BOEM GOM Region at: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, (504) 736-2519 or (800) 200-GULF.

FOR FURTHER INFORMATION CONTACT:

Susan Erin O'Reilly Vaughan, Chief, Leasing and Financial Responsibility, Office of Leasing and Plans, 504-736-1759, Erin.O'Reilly@boem.gov or Wright Jay Frank, Chief, Leasing Policy and Management Division, 703-787-1325, Wright.Frank@boem.gov.

Table of Contents

This Final NOS includes the following sections:

- I. Lease Sale Area
- II. Statutes and Regulations
- III. Lease Terms and Economic Conditions
- IV. Lease Stipulations
- V. Information to Lessees
- VI. Maps
- VII. Bidding Instructions
- VIII. Bidding Rules and Restrictions
- IX. Forms
- X. The Lease Sale
- XI. Delay of Sale

I. Lease Sale Area

Blocks Offered For Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the GOM, except those blocks listed in "Blocks Not Offered for Leasing" below.

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale. The BOEM Official Protraction Diagrams (OPDs) and Supplemental Official Block Diagrams are available online at <https://www.boem.gov/Maps-and-GIS-Data/>.

- Whole and partial blocks that lie within the current boundaries of the Flower Garden Banks National Marine Sanctuary (in the East and West Flower Garden Banks and the Stetson Bank), identified in the following list:
High Island, East Addition, South Extension (Leasing Map TX7C)

Whole Block: A-398
Partial Blocks: A-366, A-367, A-374, A-375, A-383, A-384, A-385, A-388, A-389, A-397, A-399, A-401
High Island, South Addition (Leasing Map TX7B)

Partial Blocks: A-502, A-513
Garden Banks (OPD NG15-02)

Partial Blocks: 134, 135

- Blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:

Lund South (OPD NG 16-07)

Whole Blocks: 128, 129, 169 through 173, 208 through 217, 248 through 261, 293 through 305, and 349

Henderson (OPD NG 16-05)

Whole Blocks: 466, 508 through 510, 551 through 554, 594 through 599, 637 through 643, 679 through 687, 722 through 731, 764 through 775, 807 through 819, 849 through 862, 891 through 905, 933 through 949, and 975 through 992

Partial Blocks: 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, and 994

Florida Plain (OPD NG 16-08)

Whole Blocks: 5 through 24, 46 through 67, 89 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370

- All whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109-432:

Pensacola (OPD NH 16-05)

Whole Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, and 969 through 975

Destin Dome (OPD NH 16-08)

Whole Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981

DeSoto Canyon (OPD NH 16-11)

Whole Blocks: 1 through 15, 45 through 59, and 92 through 102
Partial Blocks: 16, 60, 61, 89 through 91, 103 through 105, and 135 through 147

Henderson (OPD NG 16-05)

Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, and 423

- Depth restricted, segregated block portion(s):

Block 299, Main Pass Area, South and East Addition (Louisiana Leasing Map LA10A), containing 1,125 acres, from the surface of the earth down to a subsea depth of 1,900 feet with respect to the following described portions: SW¹/₄NE¹/₄; NW¹/₄SE¹/₄NE¹/₄; W¹/₂NE¹/₄SE¹/₄NE¹/₄; S¹/₂S¹/₂NW¹/₄NE¹/₄; S¹/₂SW¹/₄NE¹/₄NE¹/₄; S¹/₂SW¹/₄SE¹/₄NE¹/₄NE¹/₄; N¹/₂SW¹/₄SE¹/₄ NE¹/₄; SW¹/₄SW¹/₄SE¹/₄NE¹/₄; NW¹/₄SE¹/₄ SE¹/₄ NE¹/₄; N¹/₂NW¹/₄SW¹/₄SE¹/₄SE¹/₄NE¹/₄; N¹/₂SE¹/₄SW¹/₄SE¹/₄NE¹/₄; N¹/₂S¹/₂SE¹/₄SW¹/₄SE¹/₄NE¹/₄; S¹/₂NE¹/₄NW¹/₄; S¹/₂S¹/₂N¹/₂NE¹/₄NW¹/₄; N¹/₂ SE¹/₄NW¹/₄; S¹/₂SE¹/₄NW¹/₄NW¹/₄; NE¹/₄SE¹/₄ NW¹/₄NW¹/₄; E¹/₂NE¹/₄SW¹/₄NW¹/₄; N¹/₂SE¹/₄SE¹/₄NW¹/₄; NE¹/₄SW¹/₄SE¹/₄NW¹/₄; N¹/₂NW¹/₄SW¹/₄SE¹/₄NW¹/₄; SE¹/₄SE¹/₄SE¹/₄NW¹/₄; E¹/₂SW¹/₄ SE¹/₄SE¹/₄NW¹/₄; N¹/₂NW¹/₄NE¹/₄SW¹/₄NW¹/₄; N¹/₂S¹/₂NW¹/₄NE¹/₄SW¹/₄NW¹/₄;

N¹/₂N¹/₂NE¹/₄NE¹/₄SW¹/₄; N¹/₂N¹/₂N¹/₂NW¹/₄NW¹/₄SE¹/₄; N¹/₂N¹/₂NW¹/₄NE¹/₄NW¹/₄SE¹/₄.

- The following blocks, whose lease status is currently under appeal: Keathley Canyon (Official Protraction Diagram NG15–05) Blocks 246, 247, 290, 291, 292, 335 and 336 Vermilion Area (Leasing Map LA3) Partial Block 179 and Vermilion (Leasing Map LA3) Block 153 Atwater Valley (Official Protraction Diagram NG16–01) Block 63

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331–1356, as amended, and is subject to OCSLA implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including but not limited to

OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.*, those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee’s obligations under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form may be viewed on BOEM’s website at <http://www.boem.gov/BOEM-2005>.

The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Primary Term

Primary Terms are summarized in the following table:

Water depth (meters)	Primary term
0 to <400	The primary term is five years; the lessee may earn an additional three years (<i>i.e.</i> , for an eight-year extended primary term) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVD SS) during the first five years of the lease.
400 to <800	The primary term is five years; the lessee will earn an additional three years (<i>i.e.</i> , for an eight-year extended primary term) if a well is spudded during the first five years of the lease.
800 to <1,600	The primary term is seven years; the lessee will earn an additional three years (<i>i.e.</i> , for a ten-year extended primary term) if a well is spudded during the first seven years of the lease.
1,600+	Ten years.

(1) The primary term for a lease in water depths less than 400 meters issued as a result of this sale is five years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVD SS within the first five years of the lease, then the lessee may earn an additional three years, resulting in an eight-year primary term. The lessee will earn the eight-year primary term when the well is drilled to a target below 25,000 feet TVD SS, or the lessee may earn the eight-year primary term in cases where the well targets, but does not reach, a depth below 25,000 feet TVD SS due to mechanical or safety reasons, and where the lessee provides sufficient evidence that it did not reach that target for reasons beyond the lessee’s control.

In order to earn the eight-year extended primary term, the lessee is required to submit to the BOEM GOM Regional Supervisor for Leasing and Plans, as soon as practicable, but no more than 30 days after completion of

the drilling operation, a letter providing the well number, spud date, information demonstrating a target below 25,000 TVD SS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. This letter must request confirmation that the lessee earned the eight-year primary term. The BOEM GOM Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee’s letter, whether the lessee has earned the extended primary term and update BOEM records accordingly. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

A lessee that has earned the eight-year primary term by spudding a well with a hydrocarbon target below 25,000 feet TVD SS during the standard five-year primary term of the lease will not be

granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The primary term for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is five years. If the lessee spuds a well within the five-year primary term of the lease, the lessee will earn an additional three years, resulting in an eight-year primary term.

In order to earn the eight-year primary term, the lessee is required to submit to the BOEM GOM Regional Supervisor for Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation that the lessee earned the eight-year extended primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether

the lessee has earned the extended primary term and update BOEM records accordingly. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(3) The standard primary term for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale is seven years. If the lessee spuds a well within the standard seven-year primary term, the lessee will earn an additional three years, resulting in a ten-year extended primary term.

In order to earn the ten-year primary term, the lessee is required to submit to the BOEM GOM Regional Supervisor for Leasing and Plans, as soon as practicable, but in no instance more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation

that the lessee earned the ten-year primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and update BOEM records accordingly. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(4) The primary term for a lease in water depths 1,600 meters or deeper issued as a result of this sale will be ten years.

Economic Conditions

Minimum Bonus Bid Amounts

- \$25.00 per acre or fraction thereof for blocks in water depths less than 400 meters; and

- \$100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to, or exceeding, the specified minimum bid of \$25.00 per acre or fraction thereof for blocks in water depths less than 400 meters, and \$100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8 +
0 to <200	\$7.00	\$14.00, \$21.00, & \$28.00.
200 to <400	11.00	\$22.00, \$33.00, & \$44.00.
400+	11.00	\$16.00.

Escalating Rental Rates for Leases With an Eight-Year Primary Term in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an eight-year primary term will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVD SS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 12.5 percent for leases situated in water depths less than 200 meters; and
- 18.75 percent for leases situated in water depths of 200 meters and deeper.

Minimum Royalty Rate

- \$7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- \$11.00 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The issuance of leases with Royalty Suspension Volumes (RSVs) or other forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in Bureau of Safety and Environmental Enforcement (BSEE) regulations at 30 CFR part 203. In this sale, the only royalty relief program being offered that involves the provision of RSVs relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following section.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Pursuant to 30 CFR part 203, certain leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVD SS or deeper receive a RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203. These regulations implement the requirements of the Energy Policy

Act of 2005 (Pub. L. 109–58, 119 Stat. 594 (2005)).

IV. Lease Stipulations

Consistent with the Record of Decision for the Final Programmatic Environmental Impact Statement for the 2017–2022 Five Year OCS Oil and Gas Leasing Program, Stipulation No. 5 (Topographic Features) and Stipulation No. 8 (Live Bottom) will apply to every lease sale in the GOM Program Area. One or more of the remaining eight stipulations may be applied to leases issued as a result of this sale, on applicable blocks as identified on the map “Gulf of Mexico Region-wide Oil and Gas Lease Sale 252, March 20, 2019, Stipulations and Deferred Blocks” included in the Final NOS package. The full text of the following stipulations is contained in the “Lease Stipulations” section of the Final NOS package.

- (1) Military Areas
- (2) Evacuation
- (3) Coordination
- (4) Protected Species
- (5) Topographic Features
- (6) United Nations Convention on the Law of the Sea Royalty Payment
- (7) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico
- (8) Live Bottom

- (9) Blocks South of Baldwin County, Alabama
- (10) Restrictions due to Rights-of-Use and Easement for Floating Production Facilities

V. Information to Lessees

Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the "Information to Lessees" section of the Final NOS package and covers the following topics:

- (1) Navigation Safety
- (2) Ordnance Disposal Areas
- (3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
- (4) Lightering Zones
- (5) Indicated Hydrocarbons List
- (6) Military Areas
- (7) Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain U.S. Coast Guard (USCG) Regulations
- (8) Significant Outer Continental Shelf Sediment Resource Areas
- (9) Notice of Arrival on the Outer Continental Shelf
- (10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
- (11) Protected Species
- (12) Proposed Expansion of the Flower Garden Banks National Marine Sanctuary
- (13) Communication Towers
- (14) Deepwater Port Applications for Offshore Oil and Liquefied Natural Gas Facilities
- (15) Ocean Dredged Material Disposal Sites
- (16) Rights-of-Use and Easement
- (17) Industrial Waste Disposal Areas
- (18) Gulf Islands National Seashore
- (19) Air Quality Permit/Plan Approvals

VI. Maps

The maps pertaining to this lease sale may be viewed on BOEM's website at <http://www.boem.gov/Sale-252/>. The following maps also are included in the Final NOS package:

Lease Terms and Economic Conditions Map

The lease terms and economic conditions associated with leases of certain blocks are shown on the map entitled, "Gulf of Mexico Region-wide Oil and Gas Lease Sale 252, March 20, 2019, Lease Terms and Economic Conditions."

Stipulations and Deferred Blocks Map

The lease stipulations and the blocks to which they apply are shown on the

map entitled, "Gulf of Mexico Region-wide Oil and Gas Lease Sale 252, March 20, 2019, Stipulations and Deferred Blocks Map."

VII. Bidding Instructions

Bids may be submitted in person or by mail at the address below in the "Mailed Bids" section. Bidders submitting their bid(s) in person are advised to email boemgomrleasesales@boem.gov to provide the names of the company representative(s) that will submit the bid(s). Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (e.g., 33.33333%);
- Typed name and title, and signature of each bidder's authorized officer;
- Each bidder's qualification number;
- Map name and number or Official Protraction Diagram (OPD) name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including those requiring it to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of high bids.

The information required on the bid(s) is specified in the document "Bid Form" that is available in the Final NOS package. A blank bid form is provided in the Final NOS package for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- "Sealed Bid for GOM Region-wide Sale 252, not to be opened until 9 a.m. Wednesday, March 20, 2019";
- Map name and number or OPD name and number;
- Block number for block bid upon; and

- The exact name and qualification number of the submitting bidder only.
- The Final NOS package will include a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard WS-266A, New Orleans, Louisiana 70123-2394, Contains Sealed Bids for GOM Region-wide Sale 252. Please Deliver to Mr. Greg Purvis, 2nd Floor, Immediately.

Please Note: Bidders mailing bid(s) are advised to inform BOEM by email to boemgomrleasesales@boem.gov immediately after putting their bid(s) in the mail. This will provide advance notice to BOEM regarding pending bids prior to the Bid Submission Deadline. However, if BOEM receives bids later than the Bid Submission Deadline, the BOEM GOM Regional Director (RD) will return those bids unopened to bidders. Please see "Section XI. Delay of Sale" regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (e.g., flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend an area-wide development bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time you submit your bid, a confirmation or tracking number for your payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted in order for BOEM to confirm your payment with the Office of Natural Resources Revenue (ONRR). Submitting payment to your financial institution at least five business days prior to your bid submittal will help ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have the needed time to screen and process your payment so that

they post it to ONRR prior to your placing your bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Your bid will not be accepted if BOEM cannot confirm your payment with ONRR.

If you are providing a third-party guarantee, amending an area-wide development bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, you are urged to file the same with BOEM, well in advance of submitting your bid, to allow time for BOEM to process these items and for you to take any necessary curative actions prior to your bid submission. For more information on EFT procedures, see Section X of this document entitled, "The Lease Sale."

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM-2032 (October 2011, <http://www.boem.gov/BOEM-2032/>) and Equal Opportunity Compliance Report Certification Form BOEM-2033 (October 2011, <http://www.boem.gov/BOEM-2033/>) with the BOEM GOM Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) The "Statement" page includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid on that did not use proprietary data;

(2) The "Table" listing the required data about each proprietary survey used (see below); and

(3) The "Maps" being the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in GOM Region-wide Sale 252, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS*. Any speculative data that has been reprocessed externally or "in-house" is considered proprietary due to the

proprietary processing and is no longer considered to be speculative.

The bidder or bidders must submit the GDIS in a separate and sealed envelope, and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO), Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (e.g., .pdf and ArcGIS shape file) for each proprietary survey that they identify in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the "Example of Preferred Format" that is included in the Final NOS package for additional information). The shape file must not include cultural information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address of a contact person and an alternate who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement also must include a list of all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. *Bidders must submit the GDIS statement even if no proprietary geophysical data and information were used in bid preparation for the block.*

The GDIS table should have columns that clearly state:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- Company that will provide Proprietary Data to BOEM;
- The block area and block number bid on;
- The owner of the original data set (i.e., who initially acquired the data);
- The industry's original name of the survey (e.g., E Octopus);
- The BOEM permit number for the survey;
- Whether the data set is a fast track version;
- Whether the data is speculative or proprietary;
- The data type (e.g., 2-D, 3-D, or 4-D; pre-stack or post-stack; and time or depth, etc.);
- The Migration algorithm (e.g., Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data and areal extent of bidder survey (i.e., number of

line miles for 2-D or number of blocks for 3-D);

- The Live Proprietary Survey Coverage (2-D miles 3-D Blocks);
- The computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block;
- Who reprocessed the data;
- Date Final Reprocessing Completed (month and year);
- If data was previously sent to BOEM, list the sale number and date of the sale for which it was used;
- Whether proprietary or Speculative AVO/AVA (PROP/SPEC) was used;
- Date AVO or AVA was sent to BOEM if sent during prior sale;
- Is AVO/AVA Time or Depth (PSTM or PSDM);
- Which Angled Stacks were used (NEAR, MID, FAR, ULTRAFAR etc.);
- Whether your company used Gathers to evaluate the block in question; and
- Whether your company used Vector Offset Output (VOO) or Vector Image Partitions (VIP) to evaluate the block in question.

BOEM will use the computer storage size information in estimating the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the "Example of Preferred Format" that is included in the Final NOS package. Bidders can access a blank digital version of the preferred table on the GOM Region-wide Sale 252 web page at <http://www.boem.gov/Sale-252>.

The GDIS maps are live trace maps (e.g., .pdf and ArcGIS shape files) that bidders should submit for each proprietary survey that is identified in the GDIS table. They should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the "Example of Preferred Format" that is included in the Final NOS package for additional information). As previously stated, the shape file must not include cultural information; only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM Gulf of Mexico Regional Director (RD) requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are

notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data should not be submitted to BOEM unless BOEM specifically requests the commercially available data from the bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Where the BOEM Gulf of Mexico RD has notified bidders and joint bidders that the request for such proprietary data has been withdrawn, reimbursement will not be provided. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data is received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday.

The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123-2304.

BOEM recommends that bidders mark the submission's external envelope as "Deliver Immediately to DASPU." BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: "Proprietary Geophysical Data Submitted Pursuant to GOM Region-wide Sale 252 and used during Bidder Name's evaluation of Block <Block Number>."

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) The person must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM User Account is needed to register or update an entity's records. The website for registering is gsa.gov/iaesystems.

(2) The persons must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing. The person must enroll in the IPP at <https://www.ipp.gov/>. Access then will be granted to use the IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) The persons must have a current On-line Representations and Certifications Application at gsa.gov/iaesystems.

Please Note: The GDIS Information Table must be submitted digitally, preferably as an Excel spreadsheet, on a CD, DVD, or any USB external drive (formatted for Windows), along with the seismic data map(s). If bidders have any questions, please contact Ms. Dee Smith at (504) 736-2706, or Mr. John Johnson at (504) 736-2455.

Bidders should refer to Section X of this document, "The Lease Sale: Acceptance, Rejection, or Return of Bids," regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 30 CFR 556.401, 30 CFR 556.501, and 30 CFR 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 6, 2018, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 83 FR 55560. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511-515.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including that requiring payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document "Bid Form" that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM Gulf of Mexico RD, or the RD's designee, will indicate their approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks are shown in the document "List of Blocks Available for Leasing" included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM rounded up to the next whole acre. The appropriate minimum rate per acre was then applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid so calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

- (1) Bid Form
- (2) Sample Completed Bid
- (3) Sample Bid Envelope
- (4) Sample Bid Mailing Envelope
- (5) Telephone Numbers/Addresses of Bidders Form
- (6) GDIS Form
- (7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at www.boem.gov

via live-streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount may be obtained on the BOEM website at <http://www.boem.gov/Sale-252> under the heading "Notification of EFT $\frac{1}{5}$ Bonus Liability" after 1:00 p.m. on the day of the sale. All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 1:00 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the "Instructions for Making Electronic Funds Transfer Bonus Payments" found on the BOEM website identified above.

Submitting payment to your financial institution as soon as possible the day of bid reading, but no later than 7:00 p.m. Eastern Time the day of bid reading, will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for GOM Region-wide Sale 252 following the detailed instructions contained on the ONRR Payment Information web page at <https://www.onrr.gov/ReportPay/payments.htm>. Acceptance of a deposit does not constitute and will not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final

NOS package, OCSLA, or other applicable statute or regulation will be rejected and returned to the bidder. The United States Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for GOM Region-Wide Sale 252

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with its bid adequacy procedures, which are available at <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx>.

Lease Award

BOEM requires each bidder awarded a lease to:

(1) Execute all copies of the lease (Form BOEM-2005 (February 2017), as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that only one transaction be used for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS package in the case of an event that the BOEM Gulf of Mexico RD deems may interfere with a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736-0557, or access the BOEM website at <http://www.boem.gov>, for information regarding any changes.

Dated: February 12, 2019.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2019-02554 Filed 2-14-19; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2019-0003]

Gulf of Mexico, Outer Continental Shelf (OCS), Oil and Gas Lease Sale 252

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of a Record of Decision for proposed Gulf of Mexico (GOM) regionwide oil and gas Lease Sale 252. This Record of Decision identifies BOEM's selected alternative for proposed Lease Sale 252, which is analyzed in the *Gulf of Mexico OCS Lease Sale: Final Supplemental Environmental Impact Statement 2018* (2018 GOM Supplemental EIS).

ADDRESSES: The Record of Decision is available on BOEM's website at <http://www.boem.gov/nepaprocess/>.

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Ms. Helen Rucker, Chief, Environmental Assessment Section, Office of Environment, by telephone at 504-736-2421 or by email at helen.rucker@boem.gov.

SUPPLEMENTARY INFORMATION: In the 2018 GOM Supplemental EIS, BOEM evaluated five alternatives for proposed Lease Sale 252. We have summarized these alternatives below:

Alternative A—Regionwide OCS Lease Sale: This is BOEM's preferred alternative. This alternative would allow for a proposed GOM regionwide lease sale encompassing all three planning areas: The Western Planning Area (WPA); the Central Planning Area (CPA); and a small portion of the Eastern Planning Area (EPA) not under Congressional moratorium. Under this alternative, BOEM would offer for lease all available unleased blocks within the proposed regionwide lease sale area for oil and gas operations with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; blocks that are adjacent to or beyond the United States' Exclusive Economic Zone

in the area known as the northern portion of the Eastern Gap; whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary; and blocks where the lease status is currently under appeal. We have listed the unavailable blocks in Section I of the Final Notice of Sale for proposed Lease Sale 252 and at www.boem.gov/Sale-252. The proposed regionwide lease sale area encompasses about 91.93 million acres (ac). As of December 2018, approximately 78.4 million ac of the proposed regionwide lease sale area are available for lease. As described in the Final 2018 GOM Supplemental EIS, the estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed regionwide lease sale are between 0.211 and 1.118 billion barrels of oil (BBO) and 0.547 and 4.424 trillion cubic feet (Tcf) of natural gas.

Alternative B—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the WPA Portion of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the CPA and EPA portions of the proposed lease sale area for oil and gas operations, with the following exceptions: Whole and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006; and blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap. The proposed CPA/EPA lease sale area encompasses about 63.35 million ac. As of December 2018, approximately 51.8 million ac of the proposed CPA/EPA lease sale area are available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and produced as a result of the proposed lease sale under Alternative B are 0.185–0.970 BBO and 0.441–3.672 Tcf of gas.

Alternative C—Regionwide OCS Lease Sale Excluding Available Unleased Blocks in the CPA and EPA Portions of the Proposed Lease Sale Area: This alternative would offer for lease all available unleased blocks within the WPA portion of the proposed lease sale area for oil and gas operations, with the following exception: Whole and partial blocks within the current boundary of the Flower Garden Banks National Marine Sanctuary. The proposed WPA lease sale area encompasses about 28.58 million ac. As of December 2018, approximately 26.5 million ac of the proposed WPA lease sale area are available for lease. The estimated amounts of resources projected to be leased, discovered, developed, and

produced as a result of the proposed lease sale under Alternative C are 0.026–0.148 BBO and 0.106–0.752 Tcf of gas.

Alternative D—Alternative A, B, or C, with the Option to Exclude Available Unleased Blocks Subject to the Topographic Features, Live Bottom (Pinnacle Trend), and/or Blocks South of Baldwin County, Alabama, Stipulations: This alternative could be combined with any of the Action alternatives above (*i.e.*, Alternative A, B, or C) and would allow the flexibility to offer leases under any alternative with additional exclusions. Under Alternative D, the decisionmaker could exclude from leasing any available unleased blocks subject to any one and/or a combination of the following stipulations: Topographic Features Stipulation; Live Bottom Stipulation; and Blocks South of Baldwin County, Alabama, Stipulation (not applicable to Alternative C). This alternative considered blocks subject to these stipulations because these areas have been emphasized in scoping, can be geographically defined, and adequate information exists regarding their ecological importance and sensitivity to OCS oil- and gas-related activities.

A total of 207 blocks within the CPA and 160 blocks in the WPA are affected by the Topographic Features Stipulation. There are currently no identified topographic features protected under this stipulation in the EPA. The Live Bottom Stipulation covers the pinnacle trend area of the CPA, affecting a total of 74 blocks. Under Alternative D, the number of blocks that would become unavailable for lease represents only a small percentage of the total number of blocks to be offered under Alternative A, B, or C (<4%, even if blocks subject to all three stipulations were excluded). Therefore, Alternative D could reduce offshore infrastructure and activities in the pinnacle trend area, but Alternative D also shifts the location of offshore infrastructure and activities farther from these sensitive zones and would not lead to a reduction in overall offshore infrastructure and activities.

Alternative E—No Action: This alternative is not holding proposed regionwide Lease Sale 252 and is identified as the environmentally preferred alternative.

Lease Stipulations—The 2018 GOM Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. In the Record of Decision for the 2017–2022 Five-Year Program, the Secretary of the Interior required the protection of biologically sensitive underwater

features in all Gulf of Mexico oil and gas lease sales as programmatic mitigation; therefore, we are adopting the Topographic Features Stipulation and Live Bottom Stipulation and applying them to designated lease blocks in proposed Lease Sale 252.

The additional eight lease stipulations for proposed regionwide Lease Sale 252 are the Military Areas Stipulation; the Evacuation Stipulation; the Coordination Stipulation; the Blocks South of Baldwin County, Alabama, Stipulation; the Protected Species Stipulation; the United Nations Convention on the Law of the Sea Royalty Payment Stipulation; the Below Seabed Operations Stipulation; and the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico. We will add these eight stipulations as lease terms where applicable and they will be enforceable as part of the lease. Appendix B of the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017–2022; Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261; Final Multisale Environmental Impact Statement* provides a list and description of standard post-lease conditions of approval that BOEM or the Bureau of Safety and Environmental Enforcement may require as a result of their plan and permit review processes for the Gulf of Mexico OCS Region.

After careful consideration, BOEM has selected the preferred alternative (Alternative A) in the 2018 GOM Supplemental EIS for proposed Lease Sale 252. BOEM's selection of the preferred alternative meets the purpose of and need for the proposed action, as identified in the 2018 GOM Supplemental EIS, and provides for orderly resource development with protection of the human, marine, and coastal environments while also ensuring that the public receives a fair market value for these resources and that free-market competition is maintained.

Authority: This Notice of Availability of a Record of Decision is published pursuant to the regulations (40 CFR part 1505) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 12, 2019.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2019–02557 Filed 2–14–19; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–045 and TPA–105–006]

U.S.-UK Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-free Treatment for Currently Dutiable Imports

AGENCY: United States International Trade Commission.

ACTION: Change in dates relating to the Commission's hearing, the filing of briefs and other written submissions, and for transmittal of the Commission's report to the United States Trade Representative (USTR).

SUMMARY: Due to the lapse of appropriation between December 22, 2018 and January 25, 2019, the Commission has changed certain dates announced in its notice of investigation and hearing for these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from January 10, 2019 to February 14, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from January 14, 2019 to February 19, 2019; (iii) it has rescheduled the public hearing from January 31, 2019 to March 6, 2019; (iv) it has extended the deadline for filing post-hearing briefs and all other written submissions from February 11, 2019 to March 18, 2019; and (v) it will transmit its report to the USTR by June 12, 2019 instead of by May 8, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader David Guberman (202–708–1396 or david.guberman@usitc.gov) or Deputy Project Leader Amanda Lawrence (202–205–3185 or amanda.lawrence@usitc.gov) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>).

www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on December 13, 2018 (83 FR 59417, December 13, 2018). Due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission has changed certain dates announced in that notice regarding these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from January 10, 2019 to February 14, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from January 14, 2019 to February 19, 2019; (iii) it has rescheduled a public hearing from January 31, 2019 to March 6, 2019; (iv) it has extended the deadline for filing post-hearing briefs and all other written submissions from February 11, 2019 to March 18, 2019; and (v) it will transmit its report to the USTR by June 12, 2019 instead of by May 8, 2019. All other dates pertaining to these investigations remain the same as in the notice published in the **Federal Register** on December 13, 2018.

By order of the Commission.

Issued: February 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02436 Filed 2–14–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–565]

American Manufacturing Competitiveness Act; Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy

AGENCY: United States International Trade Commission.

ACTION: Notice; change in dates.

SUMMARY: Due to the lapse of appropriation between December 22, 2018 and January 25, 2019, the Commission has changed certain dates announced in its notice of investigation and hearing published in the **Federal Register** on October 9, 2018 (83 FR 50687, October 9, 2018); see **SUPPLEMENTARY INFORMATION** section of this notice for details.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Kimberlie Freund (202–708–5402 or kimberlie.freund@usitc.gov)

or Deputy Project Leader Samantha DeCarlo (202–205–3165 or Samantha.decarlo@usitc.gov) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on October 9, 2018 (83 FR 50687, October 9, 2018). Due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission has changed certain dates announced in that notice regarding these investigations: (i) It has extended the deadline for filing requests to appear at the public hearing from February 19, 2019 to March 18, 2019; (ii) it has extended the deadline for filing prehearing briefs and statements from February 22, 2019 to March 21, 2019; (iii) it has rescheduled a public hearing from March 5, 2019 to April 8, 2019; (iv) it has extended the deadline for filing post-hearing briefs from March 12, 2019 to April 15, 2019; (v) it has extended the deadline for filing all other written submissions from March 22, 2019 to April 23, 2019; and (vi) it will transmit its report to the Committees by October 18, 2019 instead of by September 13, 2019. All other dates pertaining to this investigation remain the same as in the notice published in the **Federal Register** on October 9, 2018.

By order of the Commission.

Issued: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02481 Filed 2–14–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-598 and 731-TA-1408 (Final)]

Rubber Bands From China; Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of rubber bands from China, provided for in subheading 4016.99.35² of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"), and to be subsidized by the government of China.³

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective January 30, 2018, following receipt of a petition filed with the Commission and Commerce by Alliance Rubber Co., Hot Springs, Arkansas. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of rubber bands from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 17, 2018 (83 FR 46969).⁴ The hearing was held in

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Merchandise covered by the scope of these investigations may also enter under HTSUS subheading 4016.99.6050.

³ The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on rubber bands from China.

⁴ Due to the lapse in appropriations and ensuing cessation of Commission operations, all import injury investigations conducted under authority of Title VII of the Tariff Act of 1930 accordingly have been tolled pursuant to 19 U.S.C. 1671d(b)(2), 1673d(b)(2).

Washington, DC, on November 13, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on January 7, 2019. The views of the Commission are contained in USITC Publication 4863 (January 2019), entitled *Rubber Bands from China: Investigation Nos. 701-TA-598 and 731-TA-1408 (Final)*.

By order of the Commission.

Issued: February 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02437 Filed 2-14-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1143]

Certain Pickup Truck Folding Bed Cover Systems and 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 December 7, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Extang Corporation of Ann Arbor, Michigan and Laurmark Enterprises, Inc. of Ann Arbor, Michigan. Amendments to the complaint were filed on February 1, 2019. 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 pickup truck folding bed cover systems and components thereof by reason of infringement of: the claim of U.S. Patent No. D620,877 ("the '877 patent"); certain claims of U.S. Patent No. 7,188,888 ("the '888 patent"); U.S. Patent No. 7,484,788 ("the '788 patent"); U.S. Patent No. 8,061,758 ("the '758 patent"); U.S. Patent No. 8,182,021 ("the '021 patent"); and U.S. Patent No. 8,690,224 ("the '224 patent"); and U.S. Trademark Registration No. 5,104,393 ("the '393 trademark") and U.S. Trademark Registration No. 3,904,016 ("the '016 trademark"). 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 general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

A motion for temporary relief filed concurrently with the complaint and amended on February 1, 2019, requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain pickup truck folding bed cover systems and components thereof during the course of the Commission's investigation.

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: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

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 February 11, 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:

(a) 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 the claim of the '877 patent; claims 11, 13, 17, and 18 of the '888 patent; claims 1–3, 5, 6, 19, and 20 of the '788 patent; claim 2 of the '758 patent; claims 1–7, and 11–30 of the '021 patent; claims 1–6 and 8–10 of the '224 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) whether there is a violation of subsection (a)(1)(C) 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 the '393 trademark and the '016 trademark 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 "folding cover assemblies for pickup truck cargo boxes and components thereof";

(3) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation;

(4) 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: Extang Corporation, 5400 S. State Road, Ann Arbor, Michigan 48108; Laurmark Enterprises, Inc., d/b/a BAK Industries, 5400 Data Court, Ann Arbor, Michigan 48108.

(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: Stehlen Automotive, 21912 Garcia Lane, Walnut, California 91789; SynteticUSA, 7141 Paramount Boulevard, Pico Rivera, California 90660; Topline Autoparts, Inc., 1157 Dunswell Avenue, Hacienda Heights, California 91745; Velocity Concepts Inc., 2847 Villa Alta Place, Hacienda Heights, CA 91745; JL Concepts Inc., 21912 Garcia Lane, Walnut, California 91789; DT Trading Inc., 417 W San Marino Avenue, Alhambra, CA 91801; Wenzhou Kouvi Hardware Products Co., Ltd., No. 10, Xiaofeng Road, Xianyan Industrial Zone,

Ouhai District, Wenzhou City, Zhejiang Province, China 325204; Syppo Marketing, Inc., 15240 Nelson Avenue, City of Industry, California 91744; Apex Auto Parts Mfg. Inc., 15240 Nelson Avenue, City of Industry, California 91744; Ningbo Huadian Cross Country Automobile Accessories Co., Ltd., Room 2402 Huijin Building No. 77, Heyi Road, Ningbo, China 315000; Sunwood Industries Co., Ltd., Room 501, Sealand Plaza, #20 Guanghua Street, Changzhou, Jiangsu, China 213001.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) 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, motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13, 210.59. Pursuant to 19 CFR 201.16(e), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint, motion for temporary relief, 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, motion for temporary relief, 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: February 12, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02508 Filed 2-14-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-365-366 and 731-TA-734-735 (Fourth Review)]

Pasta From Italy and Turkey; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty and countervailing duty orders on pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: November 5, 2018.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202-205-2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On November 5, 2018, the Commission determined that the domestic interested party group response to its notice of institution (83 FR 37517, August 1, 2018) of the subject five-year reviews was adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).²

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on February 15, 2019, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,³ and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before February 22, 2019 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 22, 2019. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. See 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at <https://edis.usitc.gov>.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (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.

² Chairman David S. Johanson and Commissioner Meredith M. Broadbent voted to conduct full reviews of the orders.

³ The Commission has found the responses submitted by A. Zerega's Sons, Inc., Dakota Growers Pasta Company, Inc., Riviana Foods, Inc., TreeHouse Foods, Inc., Industria Alimentare Colavita, S.p.A., and the government of the Republic of Turkey to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02435 Filed 2-14-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA-131-044 and TPA-105-005]

U.S.-EU Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Currently Dutiable Imports

AGENCY: United States International Trade Commission.

ACTION: Change in dates relating to the filing of post-hearing briefs and other written submissions, and for transmittal of the Commission's report to the United States Trade Representative (USTR).

SUMMARY: Due to the lapse of appropriation between December 22, 2018 and January 25, 2019, the Commission has extended the deadline for filing post-hearing briefs and all other written submissions from January 4, 2019 to February 13, 2019, and it will transmit its report to the USTR by April 23, 2019 instead of by March 19, 2019.

DATES: February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Project Leader Diana Friedman (202-205-3433 or diana.friedman@usitc.gov) or Deputy Project Leader Mary Roop (202-708-2277 or mary.roop@usitc.gov) for information specific to these investigations. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility

impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission published notice of institution of the above referenced investigations in the **Federal Register** on November 23, 2018 (83 FR 59417, November 23, 2018). Due to the lapse in appropriation (December 22, 2018 to January 25, 2019), the Commission has changed certain dates announced in that notice regarding these investigations: (i) It has extended the deadline for filing post-hearing briefs and all other written submissions from January 4, 2019 to February 13, 2019; and (ii) it will transmit its report to the USTR by April 23, 2019 instead of by March 19, 2019. All other dates pertaining to these investigations remain the same as in the notice published in the **Federal Register** on November 23, 2018.

By order of the Commission.

Issued: February 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-02434 Filed 2-14-19; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on January 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Information Warfare Research Project Consortium ("IWRP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Accenture Federal Services LLC, Arlington, VA; Adxx Corporation, Alexandria, VA; AMERICAN SYSTEMS, Chantilly, VA; Applied Research Associates Inc.,

Albuquerque, NM; Assurance Technology Corporation, Carlisle, MA; BAE Systems Information & Electronic Systems Integration Inc., Nashua, NH; BAE Systems Technology Solutions & Services Inc. (BAE Systems TSS), Rockville, MD; BlueCat Networks, Reston, VA; Cambridge International Systems Inc., Arlington, VA; Centurum Information Technology Inc., Marlton, NJ; Cisco Systems Inc., San Jose, CA; CodeMettle LLC, Atlanta, GA; Coherent Technical Services (CTS), Lexington Park, MD; Command Decisions Systems & Solutions (CDS2) Inc., Stafford, VA; D9Tech Resources LLC, Virginia Beach, VA; Deloitte Consulting, Arlington, VA; Dynamic Systems, El Segundo, CA; Engineering Services Network, Woodbridge, VA; Epsilon Systems Solutions Inc., San Diego, CA; Ernst & Young LLP (EY), Tysons, VA; Fathom 4 LLC, Charleston, SC; Force 3 LLC, Crofton, MD; Forward Slope, San Diego, CA; General Electric Company, Lynn, MA; Guidehouse LLP, McLean, VA; Herdt Consulting Inc., Chelsea, AL; HumanTouch LLC, McLean, VA; Imagine One Technology & Management Ltd., Hanahan, SC; IntelliSolutions Inc., San Diego, CA; Invitix LLC dba Instant Technologies, Durham, NC; Johns Hopkins University Applied Physics Laboratory LLC (JHU APL), Laurel, MD; L3 Technologies Inc. Communication Systems- East, Camden, NJ; La Jolla Logic, San Diego, CA; Leidos Inc., Reston, VA; Logistics Management Institute dba LMI, Tysons, VA; Louisiana Technology Group Inc. (LATG), New Orleans, LA; Maritime Applied Physics Corporation, Baltimore, MD; McKean Defense Group LLC, Philadelphia, PA; Metronome LLC, Fairfax, VA; Microsoft Corporation (Microsoft Corporation Sitz in Redmond Corporation), Redmond, WA; Millennium Corporation, Arlington, VA; NAVMAR Applied Sciences Corporation, Warminster, PA; NetApp US Public Sector, Vienna, VA; NexGen Data Systems Inc., Goose Creek, SC; Palantir USG Inc., Palo Alto, CA; Parsons Government Services Inc., Pasadena, CA; Phoenix Operations Group LLC, Woodbine, MD; Popily, Inc. dba New Knowledge, Austin, TX; Poplicus Inc. dba Govini, Arlington, VA; Predicate Logic Inc., San Diego, CA; Product Data Integration Technologies Inc. dba Modulant Inc., North Charleston, SC; Programs Management Analytics & Technologies, Inc. (PMAT), Norfolk, VA; Quantum Dimension Inc., Huntington Beach, CA; Quark Security Inc., Columbia, MD; Red River Technology LLC, Claremont, NH; Robbins-Gioia LLC, Alexandria, VA;

SAP National Security Services Inc., Newton Square, PA; Science Applications International Corporation (SAIC), Reston, VA; Sea Machines Robotics Inc., Boston, MA; Siemens Product Lifecycle Management Software Inc., Plano, TX; Silvus Technologies Inc., Los Angeles, CA; Sonalysts, Inc., Waterford, CT; South Dakota School of Mines and Technology, Rapid City, SD; Spectranetix Inc., Sunnyvale, CA; Splunk Inc., San Francisco, CA; Technical Systems Integration, Inc., Chesapeake, VA; The Arcanum Group Inc., Englewood, CO; The Columbia Group Inc., Washington, DC; The University of New Orleans, New Orleans, LA; Tkacz Engineering LLC, Myrtle Beach, SC; Transformational Security LLC, Columbia, MD; Vista Defense Technologies LLC, Rock Island, IL; Warrant Technologies LLC, Bloomington, IN; WPI Services LLC dba Systecon North America, Juno Beach, FL; WR Systems Ltd., Norfolk, VA; and XST Inc., San Diego, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019-02446 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on December 12, 2018 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ASTM International (“ASTM”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions

limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM activities originating between September 4, 2018 and December 10, 2018 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at <http://www.astm.org>.

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on September 7, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2018 (83 FR 51504).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019-02445 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on January 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Countering Weapons of Mass Destruction (“CWMD”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, 3M Company, Saint Paul, MN; Aeryon Defense USA, Inc., Denver, CO; Alqimi National Security, Inc., Rockville, MD; Anthem Engineering, LLC, Elkridge, MD; BAE Systems, Greenland, NY; Cerium Laboratories, LLC, Austin, TX; General Dynamics Land Systems, Sterling Heights, MI; General Dynamics Mission Systems, Fort Wayne, IN; Gentex Corporation, Simpson, PA; Intelseense Technologies, Fremont, CA; Noblis, Inc., Reston, VA; Quantitative Scientific Solutions (QS-2), Arlington, VA; Radiation Monitoring Devices, Inc.

(RMD, Inc.), Watertown, MA; Red Wire Technologies, Knoxville, TN; Schafer Government Services, LLC (A Belcan Company), Arlington, VA; Science & Engineering Services, LLC, Columbia, MD; Triton Systems, Inc., Chelmsford, MA; and TRX Systems, Inc., Greenbelt, MD, have been added as parties to this venture.

Also, Convergence LLC, Bel Air, MD; Laelaps Consulting, LLC, Arlington, VA; Locus Biosciences, Morrisville, NC; Northrop Grumman Systems, Huntsville, AL; and Rigaku Analytical Devices, Inc., Wilmington, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on October 29, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 6, 2018 (83 FR 62901).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019-02444 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0235]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension, Without Change, of a Currently Approved Collection; Bulletproof Vest Partnership (BVP)

AGENCY: Office of Justice Program, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Assistance, is 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: The Department of Justice encourages public comment and will accepted input until April 16, 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 Joseph Husted, Program Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW, Washington, DC, 20531 by email at Joe.Husted@usdoj.gov or 202-616-6500. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Assistance, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Bulletproof Vest Program Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. The program application can be found at the Bureau of Justice Assistance, United States Department of Justice's website at <https://grants.ojp.usdoj.gov/bvp/login/externalAccess.jsp>.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Jurisdictions and law enforcement agencies with armor vest needs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 4,500 respondents will apply each year. Each application takes approximately 1 hour to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 4,500 hours.

If additional information is required, contact: Jerri Murray, 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: February 12, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-02487 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0218]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Without Change, of a Previously Approved Collection; Census of Juveniles in Residential Placement (CJRP)

AGENCY: Office of Justice Programs, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, 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 30 days until March 18, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Benjamin Adams, Social Science Analyst, National Institute of Justice,

810 Seventh Street NW, Washington, DC 20531 (email: benjamin.adams@usdoj.gov; telephone: 202-616-3687).

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 shall have practical utility;
- Evaluate whether the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used;
- Evaluate whether and if so how the quality, utility, and clarity of the information collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:*

Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Census of Juveniles in Residential Placement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ-14, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit. *Abstract:* The Census of Juveniles in Residential Placement (CJRP), which is administered biennially, collects information from all secure and nonsecure residential placement facilities that house juvenile offenders, defined as persons younger than age 21 who are held in a residential setting as a result of some contact with the justice system. This encompasses both status offenses and delinquency offenses, and includes youth who are either temporarily detained by the court or

committed after adjudication for an offense. The information gathered in the national collection will be used in published reports and statistics. The reports will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, others interested in juvenile offenders, and the general public via the OJP agency websites.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,204 respondents will complete questionnaire in an average of 3 hours per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,646 total burden hours associated with the collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 12, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-02490 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0100]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2019 Census of Jails

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 April 16, 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 Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: Todd.Minton@usdoj.gov; telephone: 202-305-9630).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2019 Census of Jails (COJ).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form numbers are CJ-3: 2019 Census of Jails (COJ)-Single-Jail Reporting Unit Form; CJ-3A: 2019 Census of Jails (COJ)-Multi-Jail Reporting Unit Form; and the CJ-3A ADDENDUM: 2019 Census of Jails (COJ)-Facility Form. The COJ will collect data from approximately 2,947 reporting units (RU), representing 3,169 local jails (city, county, regional, and private) and 12 federal detention centers. The combined jail/prison systems in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, are covered in the Census of State and Federal Adult Correctional Facilities (OMB Control Number 1121-

0147), and are not in the universe for the COJ. The jail RUs are central reporters with jurisdictional authority over one or more jails. BJS will contact these central reporters and request that they report data for all facilities (3,181) under their jurisdictional authority based on the following criteria:

- 2,652 RUs that cover only one facility will receive form CJ-3, which includes all 26 questions;
- 295 RUs that cover multiple facilities will each receive one CJ-3A to report combined data for all of their facilities on 15 of the 26 questions; and
- The same 295 RUs that cover multiple facilities will receive a CJ-3A ADDENDUM form to be filled out for each facility (529 in total) under their jurisdictional authority.

This questionnaire will include 11 of the 26 questions in CJ-3, since many of these items are needed for the sampling facilities for several BJS inmate surveys.

The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

The Bureau of Justice Statistics (BJS) requests clearance to conduct the 2019 Census of Jails (COJ) under OMB Control Number 1121-0100. The COJ was last approved through 11/30/2016 under OMB Control Number 1121-0249 along with the Mortality in Correctional Institutions-Jails (MCI, formerly the Deaths in Custody Reporting Program) because of a timely need for the data. Unlike 2013, when an abbreviated form of the COJ was conducted along with MCI-Jails data collection, the 2019 COJ will be a standalone collection. BJS requests clearance for the 2019 COJ under its previous unique OMB Control Number 1121-0100.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond to the COJ includes jail administrators from approximately 2,947 reporting units (RU), representing 3,169 local jails (city, county, regional, and private), and 12 Federal Bureau of Prisons (BOP) detention facilities that function as jails. The respondents will be asked to provide information for the following categories:

(a) The purposes for which the facility hold offenders (e.g., detention facility with authority to hold persons facing criminal charges beyond 72 hours, correctional facility for persons convicted of offenses with sentences usually beyond 72 hours, etc.);

(b) As a matter of practice, does the facility hold males or females only;

(c) The functions of the facility (e.g., general adult population confinement, medical treatment/hospitalization confinement, drug treatment confinement, boot camp, etc.);

(d) At midyear (last weekday in the month of June), the total rated capacity of the jail;

(e) At midyear (last weekday in the month of June), was the facility under a federal, state or local court order or consent decree to limit the number of inmates housed; maximum number of inmates the facility is allowed to house; and the year the order or decree take effect;

(f) At midyear, was the facility under a court order or consent decree for specific conditions of confinement (e.g., crowding, staffing, food, medical facilities or services; grievance procedures or policies religious practices, etc.);

(g) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities, including: Male and female adult and juvenile inmates; persons under age 18 held as adults; inmate race/Hispanic origin; probation and parole violators; convicted and unconvicted status; persons held for felonies and misdemeanors; inmate U.S. citizenship status by conviction status; and inmates held for federal authorities, state prison authorities, American Indian or Alaska Native tribal governments, and other local jails;

(h) At midyear (last weekday in the month of June), the number of persons under the supervision of the jail jurisdiction, but not confined;

(i) On the weekend prior to midyear (last weekday in the month of June), did the jail have a weekend program that allow offenders to serve their sentences of confinement only on weekends; and the number who participated;

(j) The date and count for the greatest number of confined inmates during the 30-day period in June;

(k) The average daily population during the 365-day period between July 1, 2018 and June 30, 2019;

(l) The number of new admissions into jail, and final discharges from jail, between July 1, 2018 and June 30, 2019;

(m) At midyear (last weekday in the month of June), the number of correctional staff employed by the facility and their occupations, broken out by male or female staff (i.e., correctional officers and all other staff);

(n) Yes or no to facility practices on inmate opioid testing, screening and treatment that are conducted either on or off facility grounds;

(o) Based on the number of new admissions into jail during the 30-day period from June 1 to June 30, 2019, how many were screened with a questionnaire or interview for opioid use disorder; how many screened positive for opioid use disorder; how many of those who screened positive were unique individuals;

(p) Based on the number of new admissions into jail during the 30-day period from June 1 to June 30, 2019, how many did the facility treat for opioid withdrawal; how many treated for opioid withdraw were unique individuals; and

(q) At midyear (last weekday in the month of June), how many persons confined in the facility were receiving medication-assisted treatment for opioid disorders.

This collection is the only national effort devoted to enumerating all local jails and BOP detention facilities in the United States and the population they supervise at the facility level. The collection enables BJS, jail administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities, as well as to track changes in the demographics and supervision status of the jail population and the prevalence of crowding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

REPORTING MODE AND ESTIMATED BURDEN

Primary reporting mode	Purpose of contact	Number of data providers (RUs)	Number of responses	Average reporting time (min)	Estimated total burden hours
Web	Data collection.				
	Form CJ-3	2,652	2,652	150	6,631
	Form CJ-3A	295	295	100	491

REPORTING MODE AND ESTIMATED BURDEN—Continued

Primary reporting mode	Purpose of contact	Number of data providers (RUs)	Number of responses	Average reporting time (min)	Estimated total burden hours
	Form CJ-3A ADDENDUM	295	529	50	441
<i>Subtotal for 3 forms</i> .....	.....	2,947	3,476	150	7,563
Email and telephone	Data quality follow-up validation	1,620	1,749	10	291
Email and telephone	Verify facility operational status and point-of-contact.	300	300	5	25
Total .....	.....	.....	.....	.....	7,879

The questionnaires will be sent to from approximately 2,947 reporting units (RU), representing 3,169 local jails and 12 Federal Bureau of Prisons (BOP) detention facilities that function as jails. BJS will contact these central reporters and request that they report data for all facilities (3,181) under their jurisdictional authority. Based on prior years' reporting and the cognitive test of the new items conducted in August–December 2018, BJS estimates a reporting time of 150 minutes for CJ-3, 100 minutes for CJ-3A, and 50 minutes for the CJ-3A ADDENDUM. If needed, jail respondents will be contacted by email or telephone to verify data quality issues. BJS estimates that data quality follow-up validation will run an average of 10 minutes across 1,620 RUs. Some RUs may receive follow-up validation for multiple facilities (resulting in a total of 1,749 facilities from the original 1,620 RUs) under their jurisdictional authority. In addition, we estimate that 300 RUs will be contacted during the jail frame update stage to verify facility operational status and point-of-contact, which takes 5 minutes each on average. In total, the 2019 COJ will incur a burden estimate of 7,879 hours or about 2 hours and 30 minutes per RU for data collection and 10 minutes or less for select RUs contacted for data quality follow-up validation or facility operational status and point-of-contact validation.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 12, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-02489 Filed 2-14-19; 8:45 a.m.]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE**Notice of Lodging Proposed Consent Decree**

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States, et al. v. Antero Resources Corp.*, Civil Action No. 1:19-cv-00020-TSK, was lodged with the United States District Court for the Northern District of West Virginia, Clarksburg Division, on February 11, 2019.

This proposed Consent Decree concerns a complaint filed by the United States and the State of West Virginia against Antero Resources Corporation, pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and the West Virginia Water Pollution Control Act, W. Va. Code Chapter 22, Article 11, *et seq.*, to obtain injunctive relief from, and impose civil penalties on, the Defendant in connection with alleged discharges of pollutants at various locations in Harrison, Doddridge, and Tyler Counties in West Virginia and for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas, perform mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Patrick R. Jacobi, Trial Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Denver Place Building, 999 18th Street, Suite 370—South Terrace, Denver, CO 80202, and refer to *United States, et al. v. Antero Resources Corp.*, DJ #90-5-1-1-19240.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern

District of West Virginia, Clarksburg Division, 500 West Pike Street, Room 301, Clarksburg, WV 26302. In addition, the proposed Consent Decree may be examined electronically at http://www.justice.gov/enrd/Consent_Decrees.html.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2019-02449 Filed 2-14-19; 8:45 am]

BILLING CODE 4410-15-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**Information Security Oversight Office**

[NARA-2019-012]

National Industrial Security Program Policy Advisory Committee Meeting (NISPPAC)

AGENCY: Information Security Oversight Office, National Archives and Records Administration (NARA).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act and its implementing regulation we announce the following committee meeting.

DATES: The meeting will be on March 13, 2019, from 10 a.m. to 12 p.m.

ADDRESSES: National Archives and Records Administration; 700 Pennsylvania Avenue NW; McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert Tringali, Program Analyst, by mail at ISOO, National Archives Building; 700 Pennsylvania Avenue NW; Washington, DC 20408, by telephone at 202.357.5335, or by email at robert.tringali@nara.gov. Contact ISOO at ISOO@nara.gov and the NISPPAC at NISPPAC@nara.gov.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss

National Industrial Security Program policy matters.

The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Monday, March 4, 2019. ISOO will provide additional instructions for accessing the meeting's location. Note: Please enter through the Constitution Avenue special events entrance.

Miranda J. Andreacchio,

NARA Committee Management Officer.

[FR Doc. 2019-02402 Filed 2-14-19; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2019-011]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA gives public notice that it proposes to request an extension of an approved information collection, Identification Card Request (now being renamed Facility Access Media (FAM) Request to comply with changes in Government-wide terminology), NA Form 6006. The form is used by all individuals requesting recurring access to non-public areas of NARA's facilities and IT network. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before April 16, 2019.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001, fax them to 301-837-7409, or email them to tamee.fechhelm@nara.gov.

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301-837-1694 or fax at 301-837-7409 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), we invite the public and other Federal agencies to comment

on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses. We will summarize any comments you submit and include the summary in our request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, we solicit comments concerning the following information collection:

Title: Facility Access Media (FAM) Request (changing from Identification Card Request).

OMB number: 3095-0057.

Agency form numbers: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75.

Abstract: The Facility Access Media (FAM) Request, NA Form 6006, is completed by all individuals requiring recurring access to non-public areas of NARA's facilities and IT network (such as NARA employees, contractors, volunteers, NARA-related foundation employees, volunteers, interns, and other non-NARA Federal employees, such as Federal agency reviewers) herein referred to as "applicants," in order to obtain NARA Facility Access Media (FAM). After approval of the request, the applicant is given a FAM, if approved, and is then able to access non-public areas of NARA facilities and IT network.

The collection of information is necessary to comply with Homeland Security Presidential Directive (HSPD) 12 requirements for secure and reliable forms of personal identification issued by Federal agencies to their employees, contractors, and other individuals requiring recurring access to non-public areas of Government facilities and information services. The name change is necessary to comply with changes in Government-wide terminology so that

the request refers to all types of access media, not just identification cards. This form was developed to comply with this requirement.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019-02512 Filed 2-14-19; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA-2019-013]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on March 20, 2019, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by midnight EDT March 17, 2019.

Location: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by mail at National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road—OGIS; College Park, MD 20740-6001, by telephone at 202-741-5770, or by email at foia-advisory-committee@nara.gov.

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: This is the third meeting of the third committee term. The Committee will hear academic research about FOIA and review the work of the committee's three subcommittees, working on records management, FOIA vision, and time/volume. We will post meeting materials online at <https://www.archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings>.

Procedures: The meeting is open to the public. Due to building access restrictions, you must register through Eventbrite in advance if you wish to

attend. You will also go through security screening when you enter the building. To register, use this link: <https://foia-advisory-committee-meeting.eventbrite.com>. We will also live-stream the meeting on the National Archives' YouTube channel at <https://www.youtube.com/user/usnationalarchives>, and include a captioning option. To request additional accommodations (e.g., a transcript), email foia-advisory-committee@nara.gov or call 202-741-5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Miranda J. Andreacchio,
Committee Management Officer.

[FR Doc. 2019-02407 Filed 2-14-19; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities will hold twenty-seven meetings of the Humanities Panel, a federal advisory committee, during March and April 2019. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: March 14, 2019
This meeting will discuss

applications on the topic of The Americas: Art and Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

2. Date: March 27, 2019
This meeting will discuss applications on the topics of British and Medieval Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.
3. Date: March 27, 2019
This meeting will discuss applications for the National Digital Newspaper Program, submitted to the Division of Preservation and Access.
4. Date: March 29, 2019
This meeting will discuss applications on the topic of Archaeology, for the Collaborative Research grant program, submitted to the Division of Research Programs.
5. Date: April 1, 2019
This meeting will discuss applications on the topics of Arts and Media, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
6. Date: April 2, 2019
This meeting will discuss applications on the topics of the Middle East, Africa, and Asia, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.
7. Date: April 3, 2019
This meeting will discuss applications on the topic of Cultural History, for Media Projects: Development Grants, submitted to the Division of Public Programs.
8. Date: April 3, 2019
This meeting will discuss applications on the topics of European Literature, History, and the Arts, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.
9. Date: April 3, 2019
This meeting will discuss applications on the topic of Digital Collections, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
10. Date: April 4, 2019
This meeting will discuss applications on the topics of Literature, Arts, Philosophy, Religion, and Politics, for the Collaborative Research grant program, submitted to the Division of Research Programs.
11. Date: April 4, 2019

This meeting will discuss applications on the topic of U.S. History and Place, for Public Humanities Projects: Exhibitions: Implementation Grants, submitted to the Division of Public Programs.

12. Date: April 5, 2019
This meeting will discuss applications on the topic of History, for Media Projects: Development Grants, submitted to the Division of Public Programs.
13. Date: April 8, 2019
This meeting will discuss applications on the topics of Geospatial Modeling and Digital Archaeology, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
14. Date: April 9, 2019
This meeting will discuss applications on the topic of History, for Media Projects: Production Grants, submitted to the Division of Public Programs.
15. Date: April 9, 2019
This meeting will discuss applications on the topics of History and Archaeology, for the Collaborative Research grant program, submitted to the Division of Research Programs.
16. Date: April 10, 2019
This meeting will discuss applications on the topics of Art, Music, Literature, and Architecture, for the Collaborative Research grant program, submitted to the Division of Research Programs.
17. Date: April 10, 2019
This meeting will discuss applications on the topic of Art History, for Public Humanities Projects: Exhibitions: Implementation Grants, submitted to the Division of Public Programs.
18. Date: April 10, 2019
This meeting will discuss applications on the topics of Arts, Media, and Literature, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
19. Date: April 11, 2019
This meeting will discuss applications on the topics of U.S. Literature and Culture, for Public Humanities Projects: Exhibitions: Implementation Grants, submitted to the Division of Public Programs.
20. Date: April 11, 2019
This meeting will discuss applications on the topics of History and the Social Sciences, for the Collaborative Research grant program, submitted to the Division of Research Programs.
21. Date: April 12, 2019
This meeting will discuss

- applications on the topic of Cultural History, for Media Projects: Production Grants, submitted to the Division of Public Programs.
22. Date: April 12, 2019
This meeting will discuss applications for Public Humanities Projects: Humanities Discussions Grants, submitted to the Division of Public Programs.
23. Date: April 15, 2019
This meeting will discuss applications on the topics of Philosophy, Religion, and Social Science, for the Collaborative Research grant program, submitted to the Division of Research Programs.
24. Date: April 16, 2019
This meeting will discuss applications on the topic of The Americas: History and Philosophy, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.
25. Date: April 22, 2019
This meeting will discuss applications on the topics of Languages, Linguistics, and Text Analysis, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
26. Date: April 24, 2019
This meeting will discuss applications on the topics of Scholarly Communications and Digital Editions, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.
27. Date: April 25, 2019
This meeting will discuss applications on the topics of History and Archaeology, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: February 12, 2019.

Elizabeth Voyatzis,

Committee Management Officer, National Endowment for the Humanities.

[FR Doc. 2019-02482 Filed 2-14-19; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL SCIENCE FOUNDATION

Request for Information: Action on Interoperability of Medical Devices, Data, and Platforms To Enhance Patient Care

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of request for information.

SUMMARY: The NITRD Health Information Technology Research and Development Interagency Working Group (HITRD IWG) requests input to collect information on new approaches from industry, academia, and non-governmental organizations, to solve the interoperability issues between medical devices, data, and platforms.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. (ET) on March 15, 2019.

FOR FURTHER INFORMATION CONTACT: Alex Thai at (202) 459-9674 or HITRD-RFI@nitrd.gov, or by post mailing to 2415 Eisenhower Avenue, Alexandria, VA 22314 USA. 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.

ADDRESSES: Comments submitted in response to this notice may be sent by any of the following methods:

Email: HITRD-RFI@NITRD.gov. Email submissions should be machine-readable and not be copy-protected.

Submission should include "RFI Response: Action on Interoperability of Medical Devices, Data, and Platforms to Enhance Patient Care" in the subject line of the message.

Fax: (202) 459-9673, Attn: Alex Thai; or

Mail: Attn: Alex Thai, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314 USA.

SUPPLEMENTARY INFORMATION:

Purpose: There is ongoing recognition that medical device interoperability is an issue and has a documented impact on patient care and safety. These issues persist despite previous government efforts by the Food and Drug Administration, the Department of Defense, the Veterans Administration, the National Institute of Standards and Technology, the National Institutes of Health, and the National Science Foundation. The goal of this effort is to determine whether a vision of sustained interoperability in the hospital and into the community is feasible and, if so,

what it will take to realize it. In addition, this RFI looks to examine how users might leverage the existing tools and processes for implementing this shared future vision. Please address the following in your response.

(1) What is your vision for addressing interoperability issues between medical devices, data, and platforms? How would this plan to create interoperable systems address your key use cases and pain points?

(2) Who are the relevant parties and their contributions to your interoperability solution?

(3) What are the challenges and impediments to making interoperability happen? How might these issues be addressed and by whom?

(4) Is the federal vision for a medical device, data, and platform interoperability end state outlined in this RFI viable? Please explain why you have reached the conclusion that you have.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submissions must not exceed 20 pages in 12 point or larger font, with a page number provided on each page. Responses should include the following: Name of the individual(s) or organization(s) filing the comment; a description of the individual(s) or organization(s) mission and/or expertise; non-proprietary public-private partnership work within the past three years with Federal, State, or local governments that is relevant to applied research on interoperability on data, platforms, and medical devices; and an Executive Summary for comments exceeding 15 pages.

Responses to this RFI may be posted online at <http://www.nitrd.gov>. Please do not include any confidential, proprietary, or sensitive information that you do not wish to be made public. Submissions are subject to the Freedom of Information Act (FOIA).

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

Overview: Medical devices, electronic health records, and the data generated and stored in these systems are essential to the practice and advancement of modern medicine and healthcare. While healthcare systems are rife with medical devices and the data they produce, to date, these devices are not interoperable and cannot effectively interact with each other and the broader healthcare ecosystem. With interoperability

between medical devices and systems enabled, new models for monitoring, device interaction, and control—including the development of closed loop, autonomous and semiautonomous systems—can be realized. These new models will provide greater support for patient safety, decrease medical errors, reduce provider burden, reduce practice variability across healthcare facilities/geographic areas and, ultimately, will enhance medical care quality and outcomes.

Future Vision: When people with serious injuries or illness are hospitalized medical device additions and changes are automatically recorded with no deficit in patient safety, loss in data fidelity, or data security as the patient transitions across the continuum of care. Additional medical devices can be added or removed as the patient's status changes and details of these changes, calibration of the instruments, and each equipment's unique device identifier [UDI] and configuration settings are recorded and synchronized. If a piece of equipment breaks, it can be switched seamlessly with a device from another vendor. Data and settings from patient medical devices, such as insulin pumps, are identified, integrated, and time synchronized, and select data are included in the electronic health record. As autonomous capabilities are added, real-time care is logged, and supervisory control established to ensure the provision of real-time patient monitoring and support. When providers are not available, or have competing demands, medical devices will function in a closed loop, autonomous manner with appropriate safety and control measures to stabilize the patient. Data will flow through changes in equipment that occur in moves from the emergency room, to the operating room, to the intensive care unit, to a rehabilitation facility, and finally to the home. This will allow for data and metadata to flow even as changes in equipment are mapped to individual patient needs and environment. Each change in equipment configuration will be noted in the supervisory system/medical record and in the metadata (e.g., the UDI) generated by the device. The resulting patient record from these systems will include device data, metadata, and care documentation. These patient records can be stored and analyzed using medical black box recorder-equivalents to assess adverse events or examine unexpected positive outcomes. This will also improve the consistency and quality of care; create real-time

automated care systems; create a learning health system.

These types of records and the real-time systems interactions they enable are widely used or are being actively developed in other industries, such as the industrial controls and autonomous systems in the automotive, aviation, and energy sectors. That is not the case for healthcare. While there are many factors that may inhibit real-time interaction in a medical setting, interoperability solutions that are relevant for healthcare and patient safety need to be developed. Seamlessly flowing, interoperable data from medical devices and systems, when utilized effectively, could significantly enhance patient outcomes, identify and reduce errors, enhance the efficiency of care delivery, reduce development times and costs, improve standardization/consistency of care delivery, and decrease healthcare provider burnout.

Next Steps: The Government anticipates hosting a conference in June/July 2019 to allow for additional engagement. The results of the conference discussion, in addition to the written responses to this RFI, will be used to determine next steps in addressing federal efforts in interoperability of data, platforms, and medical devices. This RFI is solely issued to engage with interested parties to inform the Government on developing a strategy for medical device, data, and platform interoperability. The Government will not reimburse costs associated with participating in the conference. The Government may contact respondents regarding their submissions, such as to ask questions, to learn more, or to notify them of further developments related to the effort.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on February 11, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019-02519 Filed 2-14-19; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0119]

Information Collection: NRC Form 398, "Personal Qualification Statement—Licensee"

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, "NRC Form 398, "Personal Qualification Statement—Licensee."

DATES: Submit comments by March 18, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0090), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oir_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.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC-2018-0119 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-2018-0119. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2018-0119 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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Package Accession No. ML18166A095. The supporting statement and NRC Form 398 are available in ADAMS under ML18166A123 and ML18166A129.

- **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.

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, “NRC Form 398, “Personal Qualification Statement—Licensee.” 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 October 10, 2018, 83 FR 50970.

1. *The title of the information collection:* NRC Form 398, “Personal Qualification Statement—Licensee.”

2. *OMB approval number:* 3150–0090.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 398.

5. *How often the collection is required or requested:* Upon application for an initial or upgrade operator license and every six years for the renewal of operator or senior operator licenses.

6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying that the applicants and renewal operators are qualified to be licensed as reactor operators and senior reactor operators.

7. *The estimated number of annual responses:* 1,074.

8. *The estimated number of annual respondents:* 1,074.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 5,711.

10. *Abstract:* NRC Form 398 is used to transmit detailed information required to be submitted to the NRC by a facility licensee on each applicant applying for new and upgraded licenses or license renewals to operate the controls at a nuclear reactor facility. This information is used to determine that each applicant or renewal operator seeking a license or renewal of a license is qualified to be issued a license and that the licensed operator would not be expected to cause operational errors and endanger public health and safety.

Dated at Rockville, Maryland, this 11th day of February 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–02459 Filed 2–14–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0021]

Information Collection: Invoice Submissions by Contractors for NRC Contracts/Invoices

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of

information. The information collection is entitled, “Invoice Submissions by Contractors for NRC Contracts/Invoices.”

DATES: Submit comments by April 16, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- **Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for Docket ID NRC–2019–0021. Address questions about docket IDs in [Regulations.gov](http://www.regulations.gov) to Krupskaya Castellon; telephone: 301–287–9221; email: Krupskaya.Castellon@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Mail comments to:** David Cullison, Office of the Chief Information Officer, Mail Stop: O–1 F21, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0021 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–2019–0021. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0021 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. The supporting statement is available in ADAMS under Accession No. ML18340A256.

- *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 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.

B. Submitting Comments

Please include Docket ID NRC-2019-0021 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, 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 the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection*: Invoice Submissions by Contractors for NRC Contracts/Orders.
2. *OMB approval number*: 3150-0109.
3. *Type of submission*: Extension.

4. *The form number, if applicable*:

None.

5. *How often the collection is required or requested*: Monthly and on occasion.

6. *Who will be required or asked to respond*: NRC Contractors.

7. *The estimated number of annual responses*: 696.

8. *The estimated number of annual respondents*: 23.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request*: 348.

10. *Abstract*: In administering its contracts, the NRC Acquisition Management Division provides billing instructions for its contractors to follow in preparing invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contact terms and conditions.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 12th day of February 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-02520 Filed 2-14-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0118]

Information Collection: NRC Form 396, "Certification of Medical Examination by Facility Licensee"

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, NRC Form 396, "Certification of Medical Examination by Facility Licensee."

DATES: Submit comments by March 18, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0090), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oir_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.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID: NRC-2018-0118 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-2018-0118. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2018-0118 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. A copy of the collection of information (NRC Form 396) and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18355A568. The supporting statement is available in ADAMS under ML18305B259.

- *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.

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, NRC Form 396, "Certification of Medical Examination by Facility Licensee." 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 October 10, 2018, 83 FR 50963.

1. *The title of the information collection:* NRC Form 396, "Certification of Medical Examination by Facility Licensee."

2. *OMB approval number:* 3150-0024.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 396.

5. *How often the collection is required or requested:* Upon application for an initial or upgrade license; every six years for the renewal of an operator or senior operator license, and notices of disability that occur during licensed tenure.

6. *Who will be required or asked to respond:* Facility licensees who are tasked with certifying the medical fitness or operator licensee.

7. *The estimated number of annual responses:* 1,882.

8. *The estimated number of annual respondents:* 125.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 2,196.25 hours (1,757 Reporting hours plus 439.25 Recordkeeping hours).

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

Dated at Rockville, Maryland, this 11th day of February 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-02460 Filed 2-14-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0035]

Information Collection: NRC Form 664, General Licensee Registration

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, "NRC Form 664, General Licensee Registration."

DATES: Submit comments by March 18, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0198), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oir_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.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2018-0035 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-2018-0035. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2018-0035 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. A copy of NRC Form 664 and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18135A185. The supporting statement is available in ADAMS under Accession No. ML18332A484.

- *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.

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, NRC Form 664, "General Licensee Registration." 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 September 7, 2018 (83 FR 45471).

1. *The title of the information collection:* NRC Form 664, "General Licensee Registration."

2. *OMB approval number:* 3150-0198.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 664.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* General Licensees of the NRC who possess certain generally licensed devices subject to annual registration authorized pursuant to section 31.5 of *Title 10 of the Code of Federal Regulations* (10 CFR).

7. *The estimated number of annual responses:* 525.

8. *The estimated number of annual respondents:* 525.

9. *AAn estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 175 hours (525 annual responses \times $\frac{1}{3}$ hours).

10. *Abstract:* NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to annual registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged.

Also, the registration program ensures that general licensees are aware of and understand the requirements for the possession, use, and disposal of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the regulatory requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Dated at Rockville, Maryland, this 11th day of February 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-02458 Filed 2-14-19; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Regulation S-ID, SEC File No. 270-644, OMB Control No. 3235-0692

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S-ID (17 CFR 248), including the information collection requirements thereunder, is designed to better protect investors from the risks of identity theft. Under Regulation S-ID, SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags (the "Identity Theft Red Flags Rules") and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S-ID includes the following information collection requirements for each SEC-regulated entity that qualifies as a "financial institution" or "creditor" under Regulation S-ID and that offers or

maintains covered accounts: (i) Creation and periodic updating of an identity theft prevention program ("Program") that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (ii) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related guidelines; and (iii) training of staff to implement the Program. Section 248.202 of Regulation S-ID includes the following information collection requirements for each SEC-regulated entity that is a credit or debit card issuer: (i) Establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (ii) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures.

SEC staff estimates of the hour burdens associated with section 248.201 under Regulation S-ID include the one-time burden of complying with this section for newly-formed SEC-regulated entities, as well as the ongoing costs of compliance for all SEC-regulated entities.

All newly-formed financial institutions and creditors would be required to conduct an initial assessment of covered accounts, which SEC staff estimates would entail a one-time burden of 2 hours. Staff estimates that this burden would result in a cost of \$802 to each newly-formed financial institution or creditor.¹ To the extent a financial institution or creditor offers or maintains covered accounts, SEC staff estimates that the financial institution or creditor also would also incur a one-time burden of 25 hours to develop and obtain board approval of a Program, and a one-time burden of 4 hours to train the financial institution's or creditor's staff, for a total of 29 additional burden hours. Staff estimates that these burdens would result in additional costs of \$14,266 for each financial institution or creditor that offers or maintains covered accounts.²

¹ This estimate is based on the following calculation: 2 hours \times \$401 (hourly rate for internal counsel) = \$802. See *infra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

² SEC staff estimates that, of the 29 hours incurred to develop and obtain board approval of a Program

SEC staff estimates that approximately 613 SEC-regulated financial institutions and creditors are newly formed each year.³ Each of these 613 entities will need to conduct an initial assessment of covered accounts, for a total of 1,226 hours at a total cost of \$491,626.⁴ Of these 613 entities, staff estimates that approximately 90% (or 552) maintain covered accounts.⁵ Accordingly, staff estimates that the additional initial burden for SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts is 16,008 hours at an additional cost of \$7,874,832.⁶ Thus, the total initial estimated burden for all newly-formed SEC-regulated entities is

and train the financial institution's or creditor's staff, 10 hours will be spent by internal counsel at an hourly rate of \$401, 17 hours will be spent by administrative assistants at an hourly rate of \$78, and 2 hours will be spent by the board of directors as a whole at an hourly rate of \$4,465. Thus, the estimated \$13,858 in additional costs is based on the following calculation: (10 hours × \$401 = \$4,010) + (17 hours × \$78 = \$1,326) + (2 hours × \$4,465 = \$8,930) = \$14,266.

The cost estimate for internal counsel is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for administrative assistants is derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for the board of directors is derived from estimates made by SEC staff regarding typical board size and compensation that is based on information received from fund representatives and publicly-available sources, and adjusted for inflation.

³Based on a review of new registrations typically filed with the SEC each year, SEC staff estimates that approximately 1,218 investment advisers, 109 broker dealers, 96 investment companies, and 2 ESCs typically apply for registration with the SEC or otherwise are newly formed each year, for a total of 1,425 entities that could be financial institutions or creditors. Of these, staff estimates that all of the investment companies, ESCs, and broker-dealers are likely to qualify as financial institutions or creditors, and 33% of investment advisers (or 406) are likely to qualify. See Adopting Release, *supra* note at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 613 total financial institutions or creditors will bear the initial one-time burden of assessing covered accounts under Regulation S-ID.

⁴These estimates are based on the following calculations: 613 entities × 2 hours = 1,226 hours; 613 entities × \$802 = \$491,626.

⁵In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate.

⁶These estimates are based on the following calculations: 552 financial institutions and creditors that maintain covered accounts × 29 hours = 16,008 hours; 552 financial institutions and creditors that maintain covered accounts × \$14,266 = \$7,874,832.

17,234 hours at a total estimated cost of \$8,366,458.⁷

Each financial institution and creditor would be required to conduct periodic assessments to determine if the entity offers or maintains covered accounts, which SEC staff estimates would entail an annual burden of 1 hour per entity. Staff estimates that this burden would result in an annual cost of \$401 to each financial institution or creditor.⁸ To the extent a financial institution or creditor offers or maintains covered accounts, staff estimates that the financial institution or creditor also would incur an annual burden of 2.5 hours to prepare and present an annual report to the board, and an annual burden of 7 hours to periodically review and update the Program (including review and preservation of contracts with service providers, as well as review and preservation of any documentation received from service providers). Staff estimates that these burdens would result in additional annual costs of \$7,874 for each financial institution or creditor that offers or maintains covered accounts.⁹

SEC staff estimates that there are 9,922 SEC-regulated entities that are either financial institutions or creditors, and that all of these will be required to periodically review their accounts to determine if they offer or maintain covered accounts, for a total of 9,922 hours for these entities at a total cost of \$3,978,722.¹⁰ Of these 9,922 entities,

⁷These estimates are based on the following calculations: 1,226 hours + 16,008 hours = 17,234 hours; \$491,626 + \$7,874,832 = \$8,366,458.

⁸This estimate is based on the following calculation: 1 hour × \$401 (hourly rate for internal counsel) = \$401. See *supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

⁹Staff estimates that, of the 9.5 hours incurred to prepare and present the annual report to the board and periodically review and update the Program, 8.5 hours will be spent by internal counsel at an hourly rate of \$401, and 1 hour will be spent by the board of directors as a whole at an hourly rate of \$4,465. Thus, the estimated \$7,874 in additional annual costs is based on the following calculation: (8.5 hours × \$401 = \$3,409) + (1 hour × \$4,465 = \$4,465) = \$7,874. See *supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel and the board of directors).

¹⁰Based on a review of entities that the SEC regulates, SEC staff estimates that, as of September 1, 2018, there are approximately 13,181 investment advisers, 3,839 broker-dealers, 1,589 active open-end investment companies, and 100 ESCs. Of these, staff estimates that all of the broker-dealers, open-end investment companies and ESCs are likely to qualify as financial institutions or creditors. We also estimate that approximately 33% of investment advisers, or 4,394 investment advisers, are likely to qualify. See Adopting Release, *supra* note at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 9,922 financial institutions or creditors will bear the ongoing

staff estimates that approximately 90 percent, or 8,930, maintain covered accounts, and thus will need the additional burdens related to complying with the rules.¹¹ Accordingly, staff estimates that the additional annual burden for SEC-regulated entities that qualify as financial institutions or creditors and maintain covered accounts is 84,835 hours at an additional cost of \$70,314,820.¹² Thus, the total estimated ongoing annual burden for all SEC-regulated entities is 94,757 hours at a total estimated annual cost of \$74,293,542.¹³

The collections of information required by section 248.202 under Regulation S-ID will apply only to SEC-regulated entities that issue credit or debit cards. SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to other federal regulators' identity theft red flags rules. Therefore, staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202, and accordingly, staff estimates that there is no hour burden related to section 248.202 for SEC-regulated entities.

In total, SEC staff estimates that the aggregate annual information collection burden of Regulation S-ID is 111,991 hours (17,234 hours + 94,757 hours). This estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with

burden of assessing covered accounts under Regulation S-ID. (The SEC staff estimates that the other types of entities that are covered by the scope of the SEC's rules will not be financial institutions or creditors and therefore will not be subject to the rules' requirements.)

The estimates of 9,922 hours and \$3,784,800 are based on the following calculations: 9,922 financial institutions and creditors × 1 hour = 9,922 hours; 9,922 financial institutions and creditors × \$401 = \$3,978,722.

¹¹See *supra* note 5 and accompanying text. If a financial institution or creditor does not maintain covered accounts, there would be no ongoing annual burden for purposes of the PRA.

¹²These estimates are based on the following calculations: 8,930 financial institutions and creditors that maintain covered accounts × 9.5 hours = 84,835 hours; 8,930 financial institutions and creditors that maintain covered accounts × \$7,874 = \$70,314,820.

¹³These estimates are based on the following calculations: 9,922 hours + 84,835 hours = 94,757 hours; \$3,978,722 + \$70,314,820 = \$74,293,542.

Regulation S-ID, including compliance with the information collection requirements thereunder, is mandatory for each SEC-regulated entity that qualifies as a “financial institution” or “creditor” under Regulation S-ID (as discussed above, certain collections of information under Regulation S-ID are mandatory only for financial institutions or creditors that offer or maintain covered accounts). Responses will not be kept confidential. 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: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency’s estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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.

Dated: February 1, 2019.

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-01368 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85098; File No. SR-CboeEDGA-2019-001]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange’s Ninth Amended and Restated Bylaws (the “Exchange Bylaws”) the Fourth Amended and Restated Bylaws (the “Parent Bylaws”) of Its Parent Corporation, Cboe Global Markets, Inc. (“Cboe” or the “Parent”)

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend the Exchange’s Ninth Amended and Restated Bylaws (the “Exchange Bylaws”) the Fourth Amended and Restated Bylaws (the “Parent Bylaws”) of its parent corporation, Cboe Global Markets, Inc. (“Cboe” or the “Parent”). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of “director independence,” and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.⁵ The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of

⁵ Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,⁶ but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the “Common Stock”), on the Nasdaq Stock Market LLC (“Nasdaq”) and to designate BZX as the primary listing venue for Parent’s Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent’s registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the

Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.⁹

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent’s Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are

substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company’s governance documents accurately reflect the correct legal address of Parent’s registered office, the proposed rule change would reduce potential investor or market participant confusion.

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 not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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) by its terms, 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 operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),¹³ 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

⁶ This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ The proposed change also conforms this provision to the corresponding provision in Parent’s Bylaws. See Section 5.1 of Parent’s Bylaws.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ *Id.*

waive the 30-day operative delay so that proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will 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. Please include File Number SR-CboeEDGA-2019-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGA-2019-001. This

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeEDGA-2019-001 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-02393 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85096; File No. SR-NYSE-2018-34]

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 Change To Amend NYSE Rule 104 Governing Transactions by Designated Market Makers

February 11, 2019.

On July 31, 2018, New York Stock Exchange LLC ("NYSE") filed with the

Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 104 governing transactions by Designated Market Makers ("DMMs"). The proposed rule change was published for comment in the **Federal Register** on August 16, 2018.³ On September 24, 2018, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended to November 14, 2018 the time period in which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.⁵ On November 1, 2018, the Commission issued an order instituting proceedings, pursuant to Section 19(b)(2)(B) of the Act,⁶ to determine whether to approve or disapprove the proposed rule change.⁷ The Commission has received one comment letter on the proposal.⁸

Section 19(b)(2) of the Act⁹ provides that, after initiating disapproval 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 extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on August 16, 2018. February 12, 2019 is 180 days from that date, and April 13, 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates April

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83821 (Aug. 10, 2018), 83 FR 40808 (Aug. 16, 2018).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 84276 (Sep. 24, 2018), 83 FR 49143 (Sep. 28, 2018).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 84515, (Nov. 1, 2018), 83 FR 55763 (Nov. 7, 2018).

⁸ See Letter from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel Securities, to Assistant Secretary, Commission, dated Nov. 28, 2018.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ *Id.*

¹⁵ 17 CFR 200.30-3(a)(12).

13, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-2018-34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02392 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85106; File No. S7-966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC Concerning Options-Related Sales Practice Matters

February 12, 2019.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on January 3, 2019, pursuant to Rule 17d-2 of the Act,² by NYSE American LLC (“NYSE American”), Cboe BZX Exchange, Inc., (“BZX”), the Cboe EDGX Exchange, Inc. (“EDGX”), Cboe C2 Exchange, Inc. (“C2”), Cboe Exchange, Inc. (“Cboe”), Nasdaq ISE, LLC (“ISE”), Financial Industry Regulatory Authority, Inc. (“FINRA”), NYSE Arca, Inc. (“Arca”), The NASDAQ Stock Market LLC (“Nasdaq”), BOX Exchange LLC (“BOX”), NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“PHLX”), Miami International Securities Exchange, LLC (“MIAX”), Nasdaq GEMX, LLC (“Gemini”), Nasdaq MRX, LLC

(“Mercury”), MIAX PEARL, LLC (“MIAX PEARL”), and MIAX Emerald, LLC (MIAX Emerald) (collectively, “Participating Organizations” or “parties”).

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility

rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants’ plan for allocating regulatory responsibilities pursuant to Rule 17d-2.¹¹ On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.¹² On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner.¹³ On February 5, 2004, the Commission approved an amendment to the plan, primarily to include the BSE, which was establishing a new options trading facility to be known as BOX, as

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

¹² See Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 34759 (May 31, 2000).

¹³ See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

¹¹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

an SRO participant.¹⁴ On March 26, 2007, the Commission approved an amendment to the plan that, among other things, provided that the National Association of Securities Dealers (“NASD”) (n/k/a FINRA) and NYSE are Designated Options Examining Authorities under the plan.¹⁵ On March 12, 2008, the Commission approved an amendment to the plan primarily to add NASDAQ as an SRO participant.¹⁶ On June 18, 2008, the Commission approved an amendment to the plan primarily to remove the NYSE as a Designated Options Examining Authority, leaving FINRA as the sole Designated Options Examining Authority for all common members that are members of FINRA.¹⁷ On February 25, 2010, the Commission approved a proposed amendment to the plan to add Bats and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, the Boston Stock Exchange, Inc., to the NASDAQ OMX BX, Inc. and the Philadelphia Stock Exchange, Inc. to the NASDAQ OMX PHLX, Inc.¹⁸ On May 11, 2012, the Commission approved an amendment to the plan to add BOX as an SRO participant and to amend Section XIII of the plan to set forth a revised procedure for adding new participants to the plan.¹⁹ On December 5, 2012, the Commission approved an amendment to the plan to add MIAX as an SRO participant, and to change the name of NYSE Amex LLC to NYSE MKT LLC.²⁰ On July 26, 2013, the Commission approved an amendment to the plan to add Topaz Exchange LLC as an SRO participant.²¹ On October 29, 2015, the Commission approved an amendment to the plan to add EDGX as an SRO participant and to change the name of Topaz Exchange, LLC to ISE Gemini, LLC.²² On February 16, 2016, the Commission approved an amendment to the plan to add ISE Mercury, and remove the NYSE, as an SRO participant

to the Plan.²³ On February 2, 2017, the Commission approved an amendment to the plan to add MIAX PEARL as an SRO participant to the Plan.²⁴

The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants. Generally, under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm’s “Designated Options Examining Authority” (“DOEA”). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period in which the firm is assigned to another SRO acting as that firm’s DOEA.

III. Proposed Amendment to the Plan

On January 3, 2019, the Parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Emerald as a Participant to the Plan and to reflect name changes of certain Participating Organizations. The text of the proposed amended 17d–2 plan is as follows (additions are *italicized*; deletions are [bracketed]):

* * * * *

Agreement by and Among [Bats]Cboe BZX Exchange, Inc., BOX Options Exchange, LLC, [the Chicago Board Options]Cboe Exchange, Inc.[orporated], Cboe C2 [Options] Exchange, Inc.[orporated], [the International Securities Exchange]Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, [the] NYSE [MKT]American LLC, [the] NYSE Arca, Inc., The [NASDAQ]Nasdaq Stock Market LLC, [NASDAQ]Nasdaq BX, Inc., [the NASDAQ]Nasdaq PHLX LLC, [ISE Gemini]Nasdaq GEMX, LLC, [Bats]Cboe EDGX Exchange, Inc., [ISE Mercury]Nasdaq MRX, LLC [and], MIAX PEARL, LLC and MIAX Emerald, LLC Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

This agreement (“Agreement”), by and among [Bats]Cboe BZX Exchange,

Inc., BOX Options Exchange, LLC, [the Chicago Board Options]Cboe Exchange, Inc.[orporated], Cboe C2 [Options] Exchange, Inc.[orporated], [the International Securities Exchange]Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc. (“FINRA”), Miami International Securities Exchange, LLC, The [NASDAQ]Nasdaq Stock Market LLC (“[NASDAQ]Nasdaq”), [NASDAQ]Nasdaq BX, Inc., [the] NYSE [MKT]American LLC, [the] NYSE Arca, Inc., [the NASDAQ]Nasdaq PHLX LLC, [ISE Gemini]Nasdaq GEMX, LLC, [Bats]Cboe EDGX Exchange, Inc., [ISE Mercury]Nasdaq MRX, LLC [and], MIAX PEARL, LLC and MIAX Emerald, LLC, hereinafter collectively referred to as the Participants, is made this [13th] 2nd day of January, [2017]2019, pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the “Exchange Act”), which allows for plans among self-regulatory organizations to allocate regulatory responsibility. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the “Council”).

This Agreement amends and restates the agreement entered into among the Participants on [February 2, 2016]January 13, 2017, entitled “Agreement by and among [BATS]Bats BZX Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, [the New York Stock Exchange LLC,] NYSE MKT LLC, the NYSE Arca, Inc., the NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., the NASDAQ OMX PHLX, Inc., ISE Gemini, LLC, Bats EDGX Exchange, Inc. [and], ISE Mercury, LLC and MIAX PEARL, LLC, Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.”

Whereas, the Participants are desirous of allocating regulatory responsibilities with respect to broker-dealers, and persons associated therewith, that are members¹ of more than one Participant (the “Common Members”) and conduct a public business for compliance with Common Rules (as hereinafter defined) relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and

¹ In the case of BOX Options Exchange, LLC (“BOX”), [NASDAQ OMX]Nasdaq BX, Inc. (“BX”) and [NASDAQ]Nasdaq members are those persons who are options participants (as defined in the BOX, BX and [NASDAQ]Nasdaq Options Market Rules).

¹⁴ See Securities Exchange Act Release No. 49197 (February 5, 2004), 69 FR 7046 (February 12, 2004).

¹⁵ See Securities Exchange Act Release No. 55532 (March 26, 2007), 72 FR 15729 (April 2, 2007).

¹⁶ See Securities Exchange Act Release No. 57481 (March 12, 2008), 73 FR 14507 (March 18, 2008).

¹⁷ See Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

¹⁸ See Securities Exchange Act Release No. 61589 (February 25, 2012), 75 FR 9976 (March 4, 2010).

¹⁹ See Securities Exchange Act Release No. 66974 (May 11, 2012), 77 FR 29705 (May 18, 2012).

²⁰ See Securities Exchange Act Release No. 68363 (December 5, 2012), 77 FR 73711 (December 11, 2012).

²¹ See Securities Exchange Act Release No. 70051 (July 26, 2013), 78 FR 46644 (August 1, 2013).

²² See Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

²³ See Securities Exchange Act Release No. 77148 (February 16, 2016), 81 FR 8775 (February 22, 2016).

²⁴ See Securities Exchange Act Release No. 79929 (February 2, 2017), 82 FR 9757 (February 8, 2017).

currency warrants (collectively, "Covered Securities"); and

Whereas, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d-2 and filing such plan with the Securities and Exchange Commission ("SEC" or the "Commission") for its approval;

Now, therefore, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. As used herein the term Designated Options Examining Authority ("DOEA") shall mean: (1) FINRA insofar as it shall perform Regulatory Responsibility (as hereinafter defined) for its broker-dealer members that also are members of another Participant or (2) the Designated Examination Authority ("DEA") pursuant to SEC Rule 17d-1 under the Securities Exchange Act ("Rule 17d-1") for a broker-dealer that is a member of a more than one Participant (but not a member of FINRA).

II. As used herein, the term "Regulatory Responsibility" shall mean the examination and enforcement responsibilities relating to compliance by Common Members with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the "Common Rules"), insofar as they apply to the conduct of accounts for Covered Securities. A list of the current Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, each Participant shall submit in writing to FINRA and each DEA performing as a DOEA for any members of such Participant any revisions to Exhibit A reflecting changes in the rules of the Participant, and confirm that all other rules of the Participant listed in Exhibit A continue to meet the definition of Common Rules as defined in this Agreement. Within 30 days from the date that FINRA and each DEA performing as a DOEA has received revisions and/or confirmation that no change has been made to Exhibit A from all Participants, FINRA and each DEA performing as a DOEA shall confirm in writing to each Participant whether the rules listed in any updated Exhibit A are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibility" does not include, and each of the Participants shall (unless allocated pursuant to Rule 17d-2 otherwise than under this Agreement) retain full responsibility for, each of the following:

(a) Surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) Registration pursuant to its applicable rules of associated persons;

(c) Discharge of its duties and obligations as a DEA; and

(d) Evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participants agree, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. The representative from FINRA shall serve as Chair of the Council. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten-business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. FINRA shall have Regulatory Responsibility for all Common Members that are members of FINRA. For the purpose of fulfilling the Participants' Regulatory Responsibilities for Common Members that are not members of FINRA, the Participant that is the DEA shall serve as the DOEA. All Participants shall promptly notify the DOEAs no later than the next scheduled meeting of any change in membership of Common Members. A DOEA may request that a Common Member that is allocated to it be reallocated to another DOEA by giving thirty

days written notice thereof. The DOEAs in their discretion may approve such request and reallocate such Common Member to another DOEA.

VII. Each DOEA shall conduct an examination of each Common Member. The Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each DOEA shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council.

VIII. Each DOEA will promptly furnish a copy of the Examination report, relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each DOEA's Regulatory Responsibility shall for each Common Member allocated to it include investigations into terminations "for cause" of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, "for cause" shall include, without limitation, terminations characterized on Form U5 under the label "Permitted to Resign," "Discharge" or "Other."

X. Each DOEA shall discharge the Regulatory Responsibility for each Common Member allocated to it relative to a Covered Securities-related customer complaint² unless such complaint is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, or by a comparable means of electronic communication to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by email at such address as the representative shall have filed in writing with the Chair.

XII. The Participants shall notify the Common Members of this Agreement by

² For purposes of complaints, they can be reported pursuant to Form U4, Form U5 or RE-3 and any amendments thereto.

means of a uniform joint notice approved by the Council.

XIII. This Agreement may be amended to add a new Participant provided that such Participant does not assume Regulatory Responsibility, solely by an amendment by FINRA and such new Participant. All other Participants expressly consent to allow FINRA to add new Participants to this Agreement as provided above. FINRA will promptly notify all Participants of any such amendments to add new Participants. All other amendments to this Agreement must be approved in writing by each Participant. All amendments, including adding a new Participant, must be filed with and approved by the SEC before they become effective.

XIV. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time by giving the Council written notice thereof at least 90 days prior to the effective date of such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, any Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above; the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XV. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that

in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

XVI. No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory Responsibility to be performed by each of them hereunder.

XVII. Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d-2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory

Responsibility with respect to the matters allocated to the DOEA.

* * * * *

[January 13, 2017] *January 2, 2019*

Exhibit A

Rules Enforced Under 17d-2 Agreement

Pursuant to Section II of the Agreement by and among [Bats] *Cboe* BZX Exchange, Inc. (“BZX”), BOX Options Exchange, LLC (“BOX”), [the Chicago Board Options Exchange, Incorporated] *Cboe Exchange, Inc.* (“[CBOE] *Cboe*”), *Cboe* C2 [Options] Exchange, Inc. [orporated] (“C2”), [the International Securities Exchange] *Nasdaq ISE, LLC* (“ISE”), Financial Industry Regulatory Authority, Inc. (“FINRA”), Miami International Securities Exchange, LLC (“MIAX”), The [NASDAQ] *Nasdaq* Stock Market LLC (“[NASDAQ] *Nasdaq*”), [NASDAQ] *Nasdaq* BX, Inc. (“BX”), [the] NYSE [MKT] *American* LLC (“NYSE [MKT] *American*”), [the] NYSE Arca, Inc. (“NYSE ARCA”), [the NASDAQ] *Nasdaq* PHLX LLC (“PHLX”), [ISE Gemini] *Nasdaq GEMX, LLC* (“[ISE Gemini] *GEMX*”), [Bats] *Cboe* EDGX Exchange, Inc. (“EDGX”), [ISE Mercury] *Nasdaq MRX, LLC* (“[ISE Mercury] *MRX*”) [and], MIAX PEARL, LLC (“MIAX PEARL”) and *MIAX Emerald, LLC* (“*MIAX Emerald*”) pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 dated [January 13, 2017] *January 2, 2019* (the “Agreement”), a revised list of the current Common Rules of each Participant, as compared to those of FINRA, applicable to the conduct of accounts for Covered Securities is set forth in this Exhibit A.

Opening of Accounts

NYSE [MKT] <i>American</i>	Rules 411, 921 and 1101.
BZX	Rule 26.2.
BOX	Rule 4020.
[CBOE] <i>Cboe</i>	Rule 9.7.
C2*	[CBOE] <i>Cboe</i> Rule 9.7.
EDGX	Rule 26.2
ISE	Rule 608.
FINRA	Rules 2360(b)(16) and 2352.
MIAX	Rule 1307.
MIAX PEARL	Rule 1307.
<i>MIAX Emerald</i>	<i>Rule 1307.</i>
[ISE Gemini] <i>GEMX</i>	Rule 608.
[ISE Mercury] <i>MRX</i>	Rule 608.
PHLX	Rule 1024(b) and (c). ¹
NYSE ARCA	Options Rules 9.2-O(a) and 9.18-O(b) and Equities Rules 9.18-E(b) and 8.4-E.
BX	Chapter XI, Section 7.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 7.

Supervision

NYSE [MKT] <i>American</i>	Rules 411, 922 and 1104.
BZX	Rule 26.3.
BOX	Rule 4030.
[CBOE] <i>Cboe</i>	Rule 9.8. ²
C2*	[CBOE] <i>Cboe</i> Rule 9.8. ²
EDGX	Rule 26.3.
ISE	Rule 609.
FINRA	Rules 2360(b)(20), 2360(b)(17)(B), 2360(b)(16)(E), 2355 and 2358.
MIAX	Rule 1308.
MIAX PEARL	Rule 1308.
<i>MIAX Emerald</i>	<i>Rule 1308.</i>
[ISE Gemini] <i>GEMX</i>	Rule 609.

[ISE Mercury]MRX	Rule 609.
PHLX	Rule 1025.
NYSE ARCA	Options Rules 9.2–O(b) and 9.18–O (d)(2)(G) and Equities Rule 8.7–E.
BX	Chapter XI, Section 8.
[NASDAQ]Nasdaq	Chapter XI, Section 8.

Suitability

NYSE [MKT]American	Rules 923 and 1102.
BZX	Rule 26.4.
BOX	Rule 4040.
[CBOE]Cboe	Rule 9.9.
C2*	[CBOE]Cboe Rule 9.9.
EDGX	Rule 26.4.
ISE	Rule 610.
FINRA	Rule 2360(b)(19) and 2353.
MIAX	Rule 1309.
MIAX PEARL	Rule 1309.
MIAX Emerald	Rule 1309.
[ISE Gemini]GEMX	Rule 610.
[ISE Mercury]MRX	Rule 610.
PHLX	Rule 1026.
NYSE ARCA	Options Rule 9.18–O(c) and Equities Rules 9.18–E(c) and 8.5–E.
BX	Chapter XI, Section 9.
[NASDAQ]Nasdaq	Chapter XI, Section 9.

Discretionary Accounts

NYSE [MKT]American	Rules 421, 924 and 1103.
BZX	Rule 26.5. ³
BOX	Rule 4050.
[CBOE]Cboe	Rule 9.10.
C2*	[CBOE]Cboe Rule 9.10.
EDGX	Rule 26.5. ³
ISE	Rule 611.
FINRA	Rules 2360(b)(18) and 2354.
MIAX	Rule 1310.
MIAX PEARL	Rule 1310.
MIAX Emerald	Rule 1310.
[ISE Gemini]GEMX	Rule 611.
[ISE Mercury]MRX	Rule 611.
PHLX	Rule 1027.
NYSE ARCA	Options Rule 9.18–O(e) and Equities Rules 9.18–E(e) and 8.6–E.
BX	Chapter XI, Section 10.
[NASDAQ]Nasdaq	Chapter XI, Section 10.

Customer Communications (Advertising)

NYSE [MKT]American	Rules 991 and 1106.
BZX	Rule 26.16.
BOX	Rule 4170.
[CBOE]Cboe	Rule 9.21.
C2*	[CBOE]Cboe Rule 9.21.
EDGX	Rule 26.16.
ISE	Rule 623.
FINRA	Rules 2220 and 2357.
MIAX	Rule 1322.
MIAX PEARL	Rule 1322.
MIAX Emerald	Rule 1322.
[ISE Gemini]GEMX	Rule 623.
[ISE Mercury]MRX	Rule 623.
PHLX	[N/A] Rule 1049.
NYSE ARCA	Options Rules 9.21–O(a) and 9.21–O(b).
BX	Chapter XI, Section 22.
[NASDAQ]Nasdaq	Chapter XI, Section 22.

Customer Complaints

NYSE [MKT]American	Rules 932 and 1105.
BZX	Rule 26.17.
BOX	Rule 4190.
[CBOE]Cboe	Rule 9.23.
C2*	[CBOE]Cboe Rule 9.23.
EDGX	Rule 26.17.
ISE	Rule 625.
FINRA	FINRA Rules 2360(b)(17)(A) and 2356.
MIAX	Rule 1324.

MIAX PEARL	Rule 1324.
<i>MIAX Emerald</i>	<i>Rule 1324.</i>
[ISE Gemini] <i>GEMX</i>	Rule 625.
[ISE Mercury] <i>MRX</i>	Rule 625.
PHLX	Rule 1028.
NYSE ARCA	Options Rule 9.18–O(l) and Equities Rules 9.18–E(l) and 8.8–E.
BX	Chapter XI, Section 24.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 24.

Customer Statements

NYSE [MKT] <i>American</i>	Rules 419 and 930.
BZX	Rule 26.7.
BOX	Rule 4070.
[CBOE] <i>Cboe</i>	Rule 9.12.
C2*	[CBOE] <i>Cboe</i> Rule 9.12.
EDGX	Rule 26.7.
ISE	Rules 613.
FINRA	Rule 2360(b)(15).
MIAX	Rule 1312.
MIAX PEARL	Rule 1312.
<i>MIAX Emerald</i>	<i>Rule 1312.</i>
[ISE Gemini] <i>GEMX</i>	Rule 613.
[ISE Mercury] <i>MRX</i>	Rule 613.
PHLX	Rule 1032.
NYSE ARCA	Options Rule 9.18–O(j) and Equities Rule 9.18–E(j).
BX	Chapter XI, Section[s] 12.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 12.

Confirmations

NYSE [MKT] <i>American</i>	Rule 925.
BZX	Rule 26.6.
BOX	Rule 4060.
[CBOE] <i>Cboe</i>	Rule 9.11.
C2*	[CBOE] <i>Cboe</i> Rule 9.11.
EDGX	Rule 26.6.
ISE	Rule 612.
FINRA	Rule 2360(b)(12).
MIAX	Rule 1311.
MIAX PEARL	Rule 1311.
<i>MIAX Emerald</i>	<i>Rule 1311.</i>
[ISE Gemini] <i>GEMX</i>	Rule 612.
[ISE Mercury] <i>MRX</i>	Rule 612.
PHLX	Rule 1028.
NYSE ARCA	Options Rule 9.18–O(f) and Equities Rule 9.18–E(f).
BX	Chapter XI, Section 11.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 11.

Allocation of Exercise Assignment Notices

NYSE [MKT] <i>American</i>	Rule 981.
BZX	Rule 23.2.
BOX	Rule 9010.
[CBOE] <i>Cboe</i>	Rule 11.2.
C2*	[CBOE] <i>Cboe</i> Rule 11.2.
EDGX	Rule 23.2.
ISE	Rule 1101.
FINRA	Rule 2360(b)(23)(C).
MIAX	Rule 701.
MIAX PEARL	Rule 701.
<i>MIAX Emerald</i>	<i>Rule 701.</i>
[ISE Gemini] <i>GEMX</i>	Rule 1101.
[ISE Mercury] <i>MRX</i>	Rule 1101.
PHLX	Rule 1043.
NYSE ARCA	Options Rule 6.25–O(a).
BX	Chapter VIII, Section 2.
[NASDAQ] <i>Nasdaq</i>	Chapter VIII, Section 2.

Disclosure Documents

NYSE [MKT] <i>American</i>	Rules 921 and 926.
BZX	Rule 26.10.
BOX	Rule 4100.
[CBOE] <i>Cboe</i>	Rule 9.15.
C2*	[CBOE] <i>Cboe</i> Rule 9.15.
EDGX	Rule 26.10.
ISE	Rule 616.

FINRA	Rule 2360(b)(11).
MIAX	Rule 1315.
MIAX PEARL	Rule 1315.
<i>MIAX Emerald</i>	<i>Rule 1315.</i>
[ISE Gemini] <i>GEMX</i>	Rule 616.
[ISE Mercury] <i>MRX</i>	Rule 616.
PHLX	Rule 1024(b)(v), 1029.
NYSE ARCA	Options Rule 9.18–O(g) and Equities Rule 9.18–E(g).
BX	Chapter XI, Section 15.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 15.

Branch Offices of Member Organizations

NYSE [MKT] <i>American</i>	Rule 922(d). ⁴
BOX	Rule 4010(b).
[CBOE] <i>Cboe</i>	Rule 9.6.
C2*	[CBOE] <i>Cboe</i> Rule 9.6.
ISE	Rule 607.
FINRA	Rules 2360(b)(20)(B) and 2355.
MIAX	Rule 1306.
MIAX PEARL	Rule 1306.
<i>MIAX Emerald</i>	<i>Rule 1306.</i>
[ISE Gemini] <i>GEMX</i>	Rule 607.
[ISE Mercury] <i>MRX</i>	Rule 607.
PHLX	N/A.
NYSE ARCA	Options Rule 9.18–O(m) and Equities Rule 9.18–E(m).
BX	Chapter XI, Section 6.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 6.

Prohibition Against Guarantees

NYSE [MKT] <i>American</i>	Rule 390.
BZX	Rule 26.13.
BOX	Rule 4130.
[CBOE] <i>Cboe</i>	Rule 9.18.
C2*	[CBOE] <i>Cboe</i> Rule 9.18.
EDGX	Rule 26.13.
ISE	Rules 619.
FINRA	Rule 2150(b).
MIAX	Rule 1318.
MIAX PEARL	Rule 1318.
<i>MIAX Emerald</i>	<i>Rule 1318.</i>
[ISE Gemini] <i>GEMX</i>	Rule 619.
[ISE Mercury] <i>MRX</i>	Rule 619.
PHLX	Rule 777.
NYSE ARCA	Options Rule 9.1–O(e) and Equities Rules 9.1–E(e).
BX	Chapter XI, Sections 18 and 19.
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Sections 18 and 19.

Sharing in Accounts

NYSE [MKT] <i>American</i>	Rule 390.
BZX	Rule 26.14. ⁶
BOX	Rule 4140.
[CBOE] <i>Cboe</i>	Rule 9.18(b).
C2*	[CBOE] <i>Cboe</i> Rule 9.18(b).
EDGX	Rule 26.14. ⁶
ISE	Rule 620. ⁵
FINRA	Rule 2150(c).
MIAX	Rule 1319.
MIAX PEARL	Rule 1319.
<i>MIAX Emerald</i>	<i>Rule 1319.</i>
[ISE Gemini] <i>GEMX</i>	Rule 620. ⁵
[ISE Mercury] <i>MRX</i>	Rule 620. ⁵
PHLX	N/A.
NYSE ARCA	Options Rule 9.1–O(f).
BX	Chapter XI, Section 19. ⁶
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 19. ⁶

Registration of ROP

NYSE [MKT] <i>American</i>	Rule 920.
BZX	Rule 17.2(g)(1), (2), (6) and (7).
BOX	Rule 2020(c)(1), (e)(1) and IM–2040–4 and IM–2040–5(b).
[CBOE] <i>Cboe</i>	Rule 9.2.
C2*	[CBOE] <i>Cboe</i> Rule 9.2.
EDGX	Rule 17.2(g)(1), (2), (6) and (7).

ISE	Rule 601.
FINRA	[NASD Rules 1022(f), IM-1022-1, & 1250(a)(1)] <i>Rule 1220(a)(8)</i> .
MIAX	Rule 1301.
MIAX PEARL	Rule 1301.
<i>MIAX Emerald</i>	<i>Rule 1301</i> .
[ISE Gemini] <i>GEMX</i>	Rule 601.
[ISE Mercury] <i>MRX</i>	Rule 601.
PHLX	Rule 1024(a)(i).
NYSE ARCA	Options Rule 9.26-O and Equities Rule 9.26-E.
BX	Chapter XI, Section 2 and Chapter II, Section 2(g).
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 2 and Chapter II, Section 2(g).

Certification of Registered Personnel

NYSE [MKT] <i>American</i>	Rule 920.
BZX	Rule 2.5 Interpretation .01(c) and 11.4(e).
BOX	IM-2040-3.
[CBOE] <i>Cboe</i>	Rule 9.3.
C2*	[CBOE] <i>Cboe</i> Rule 9.3.
EDGX	Rule 2.5 Interpretation .01(c) and 11.4(e).
ISE	Rule 602.
FINRA	[NASD Rule 1032(d)] <i>Rule 1220(b) and FINRA By-Laws Article V Sections 2 and 3</i> .
MIAX	Rule 1302.
MIAX PEARL	Rule 1302.
<i>MIAX Emerald</i>	<i>Rule 1302</i> .
[ISE Gemini] <i>GEMX</i>	Rule 602.
[ISE Mercury] <i>MRX</i>	Rule 602.
PHLX	Rule 1024.
NYSE ARCA	Options Rule 9.27-O(a) and Equities Rule 9.27-E(a).
BX	Chapter XI, Section 3 and Chapter II, Section 2(h).
[NASDAQ] <i>Nasdaq</i>	Chapter XI, Section 3 and Chapter II, Section 2(h).

¹ FINRA shall not have any Regulatory Responsibility regarding foreign currency option requirements specified in any of the PHLX rules in this Exhibit A.

² FINRA shall not have any Regulatory Responsibility regarding receipt of written reports by April 1 of each year pursuant to [CBOE]*Cboe* Rule 9.8(g).

³ FINRA shall not have any Regulatory Responsibility to enforce this rule as to time and price discretion in institutional accounts.

⁴ FINRA shall only have Regulatory Responsibility for the first paragraph and shall not have any Regulatory Responsibility regarding the requirements for debt options.

⁵ FINRA shall not have any Regulatory Responsibility regarding ISE's, [ISE Gemini]*GEMX*'s and [ISE Mercury]*MRX*'s requirements to the extent its rule does not contain an exception to permit sharing in the profits and losses of an account.

⁶ FINRA shall not have any Regulatory Responsibility regarding [NASDAQ]*Nasdaq*'s, BX's, BZX's, and EDGX's requirements to the extent such rules do not contain an exception addressing immediate family.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-966 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 S7-966. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, and MIAX Emerald. 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 S7-966 and should be submitted on or before March 8, 2019.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants. The Plan, as amended, will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that

appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add MIAAX Emerald as a Participant and to reflect the name changes of certain Participating Organizations. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.²⁵ The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.²⁶ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. S7-966.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan, as amended, filed with the Commission pursuant to Rule 17d-2 on January 3, 2019, is hereby approved and declared effective.

It is further ordered that those SRO participants that are not the DOEA as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOEA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-02493 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85100; File No. SR-CBOE-2019-002]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Establish Fees for a Recently Added Option That Overlies the S&P Select Sector Index Options (“Sector Index options”)

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 5, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to establish fees for a recently added option that overlies the S&P Select Sector Index options (“Sector Index options”). 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

On October 4, 2017, the Exchange submitted a proposed rule change to amend certain rules in connection with listing ten S&P Select Sector Index³ options under generic narrow-based listing standards, which became effective on November 3, 2017.⁴ On March 1, 2018, the Exchange established fees for Sector Index options.⁵ On October 15, 2018, the Exchange amended its rules to authorize the Exchange to list for trading options on a recently added eleventh S&P Select Sector Index—the S&P Communication Services Select Sector Index (“SIXC”).⁶ The Exchange proposes to establish fees for SIXC. The proposed fees for SIXC will be the same as the fees previously established for the original ten Sector Indexes.

By way of background, a specific set of proprietary products are commonly included or excluded from a variety of programs, qualification calculations and transaction fees. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange uses the term “Underlying Symbol List A” to represent these products.⁷ The Exchange notes the reason the products in Underlying Symbol List A are often collectively included or excluded from certain programs, qualification calculations and transactions fees is because the Exchange has expended considerable resources developing and maintaining its proprietary, exclusively listed products. Similar to the products currently represented by “Underlying

³ There are ten S&P Select Sector Indexes: S&P Financial Select Sector Index (IXM), S&P Energy Select Sector Index (IXE), S&P Technology Select Sector Index (IXT), S&P Health Care Select Sector Index (IXV), S&P Utilities Select Sector Index (IXU), S&P Consumer Staples Select Sector Index (IXR), S&P Industrials Select Sector Index (IXI), S&P Consumer Discretionary Select Sector Index (IXY), S&P Materials Select Sector Index (IXB), and S&P Real Estate Select Sector Index (IXRE). The options listing symbols for options overlying these indexes will be: SIXM, SIXE, SIXT, SIXV, SIXU, SIXR, SIXI, SIXY, SIXB, and SIXRE, respectively.

⁴ See Securities Exchange Act Release No. 81879 (October 16, 2017), 82 FR 48858 (October 20, 2017) (SR-CBOE-2017-065).

⁵ See Securities Exchange Act Release No. 82854 (March 16, 2018), 83 FR 11803 (March 16, 2018) (SR-CBOE-2018-012).

⁶ See Securities Exchange Act Release No. 84490 (October 25, 2018), 83 FR 54796 (October 31, 2018) (SR-CBOE-2018-067).

⁷ Currently, Underlying Symbol List A is defined in Footnote 34 and represents the following proprietary products: OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (including SPXW), VIX, VOLATILITY INDEXES and binary options.

²⁵ On December 20, 2018, the Commission approved MIAAX Emerald's application for registration as a national securities exchange. See Securities Exchange Act Release No. 84891, 83 FR 67421 (December 28, 2018).

²⁶ See Securities Exchange Act Release No. 79929 (February 2, 2017), 82 FR 9757 (February 8, 2017).

²⁷ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Symbol List A,” Sector Index options are not listed on any other exchange. As such, the Exchange established fees for Sector Index options similar to those applicable to options overlying the indexes in Underlying Symbol List A, as well as similarly excluding those options from several programs from products in Underlying Symbol List A are excluded. In lieu of listing out these products in various sections of the Fees Schedule, the Exchange refers to Sector Indexes in the Fees Schedule (which is defined in footnote 47). The Exchange proposes to add a reference to “SIXC” to footnote 47 of the Fees Schedule.

Like products in Underlying Symbol List A and the current Sector Indexes, the Exchange proposes to except SIXC options from the Volume Incentive Program (“VIP”),⁸ the Marketing Fee,⁹ the Clearing Trading Permit Holder Fee Cap (“Fee Cap”),¹⁰ exemption from fees for facilitation orders,¹¹ the AIM Contra

Execution Fee,¹² the CFLEX AIM Response Fee,¹³ the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction,¹⁴ the Order Router Subsidy (“ORS”) and Complex Order Router Subsidy (“CORS”) Programs,¹⁵ the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,¹⁶ and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees.¹⁷

Like the other Sector Indexes, the Exchange does intend to apply to SIXC options the Liquidity Provider Sliding Scale.¹⁸ The Exchange proposes to apply to SIXC options the Liquidity Provider Sliding Scale to encourage

Market-Makers to provide liquidity in these classes and believes that including them in this sliding scale will provide such incentive.

The Exchange next proposes to establish transaction fees for SIXC options, which will be the same as the transaction fees for the other 10 Sector Indexes. Particularly, the Exchange proposes to assess the same fees for SIXC options as apply to the original Sector Index options, OEX Weekly and XEO Weekly options, except for Market-Maker transaction fees, which will be subject to the Liquidity Provider Sliding Scale as described above, and except for Clearing Trading Permit Holder Proprietary transactions, which will be \$0.25 rather than subject to the Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders. Transaction fees for SIXC options will be as follows (all listed rates are per contract):¹⁹

Customer (origin code C)	\$0.30.
Clearing Trading Permit Holder Proprietary (origin codes F and L)	\$0.25.
Market-Maker (origin code M)	Liquidity Provider Sliding Scale.
Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker, Professional/Voluntary Professional (origin codes BNWJ)	\$0.40.

The Exchange also proposes to apply to SIXC options the CFLEX Surcharge Fee of \$0.10 per contract for all Sector Index option orders executed electronically on CFLEX, capped at \$250 per trade (*i.e.*, first 2,500 contracts per trade).²⁰ The CFLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the CFLEX system. The Exchange notes that the CFLEX Surcharge Fee (and \$250 cap) also applies to other proprietary index options, including the original ten Sector Indexes and products in Underlying Symbol List A.

The Exchange currently assesses an Index License Surcharge of \$0.10 per contract for all non-customer orders for Sector Indexes and products in the Underlying Symbol A except RUT and SPX. The Exchange proposes to assess a Surcharge of \$0.10 per contract in order to recoup the costs associated with the Sector Index license.

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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the

proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Particularly, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for the previously adopted Sector Indexes, as well as other index products, including those in Underlying Symbol A. The Exchange also believes that the proposed fee amounts for SIXC option orders are reasonable because as previously discussed, the proposed fee amounts are the same as the fees already established for Sector Indexes and are also assessed for other proprietary products (*i.e.* OEX Weeklys and XEO Weeklys). The proposed fee amounts are also within the range of amounts

⁸ See Choe Options Fees Schedule, Volume Incentive Program (VIP) table and Footnote 36.

⁹ See Choe Options Fees Schedule, Footnote 6.

¹⁰ See Choe Options Fees Schedule, Footnote 11.

¹¹ See Choe Options Fees Schedule, Footnotes 11 and 12.

¹² See Choe Options Fees Schedule, Footnote 18.

¹³ See Choe Options Fees Schedule, Footnote 20.

¹⁴ See Choe Options Fees Schedule, Footnote 22.

¹⁵ See Choe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

¹⁶ See Choe Options Fees Schedule, Footnote 35.

¹⁷ See Choe Options Fees Schedule, Footnote 25.

¹⁸ See Choe Options Fees Schedule, Specified Proprietary Index Options Rate Table—Underlying Symbol List A and Sector Indexes.

¹⁹ See *id.*

²⁰ See *id.*

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ *Id.*

²⁴ 15 U.S.C. 78f(b)(4).

assessed for the Exchange's other proprietary products.²⁵

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to certain other market participants except Market-Makers and Clearing Trading Permit Holders because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to customers are intended to attract more customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly discriminatory to, assess lower fees to Market-Makers pursuant to the Liquidity Provider Sliding Scale as compared to other market participants because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Additionally, the proposed fee for Market-Makers will be applied equally to all Market-Makers (meaning that all Market-Makers will be subject to the Liquidity Provider Sliding Scale). This concept also applies to orders from all other origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange in SIXC options, which should therefore serve to benefit all Exchange market participants.

Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary orders than those of other

market participants (except Market-Makers) because Clearing Trading Permit Holders also have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. The Exchange also notes that the SIXC option fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.*, all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.). The Exchange believes the proposed transaction fee of \$0.25 per contract for Clearing Trading Permit Holders is reasonable, equitable, and not unfairly discriminatory because is comparable to the amount of transaction fees for Clearing Trading Permit Holders in other proprietary products.²⁶

The Exchange believes the proposed transaction fees for Brokers Dealers, Non-Trading Permit Holder Market-Makers, Professionals/Voluntary Professionals, JBOs and Customers are reasonable because they are the same as those assessed for transactions in certain other proprietary products.²⁷ The Exchange also notes that the SIXC option fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.*, all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.).

The Exchange believes that assessing an Index License Surcharge Fee of \$0.10 per contract to SIXC option transactions is reasonable because the Surcharge helps recoup some of the costs associated with the license for Sector Index options, including SIXC. Additionally, the Exchange notes that the Surcharge amount is the same as, and in some cases lower than, the amount assessed as an Index License Surcharge to other index products. The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the Surcharge applies. Not applying the SIXC License Surcharge Fee to Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer Sector Index option orders, which increases

liquidity and provides greater trading opportunities to all market participants.

Similarly, the Exchange believes assessing a CFLEX Surcharge Fee of \$0.10 per contract for SIXC option orders executed electronically on CFLEX and capping it at \$250 (*i.e.*, first 2,500 contracts per trade) is reasonable because it is the same amount currently charged to other Sector Indexes and proprietary index products for the same transactions.²⁸ The proposed Surcharge is also equitable and not unfairly discriminatory because the amount will be assessed to all market participants to whom the CFLEX Surcharge applies.

Excepting VIP, the Marketing Fee, the Fee Cap, exemption from fees for facilitation orders, the AIM Contra Execution Fee, the CFLEX AIM Response Fee, the Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates transaction fee cap for all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, the ORS and CORS Programs,²⁹ the per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB and auction response in the complex order auction and AIM,³⁰ and the calculation of qualifying volume for rebates for Floor Broker Trading Permit Holder Trading Permit Fees is reasonable because the original ten Sector Indexes, as well as other proprietary products are excepted from those same items. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to except SIXC options from items on the Fees Schedule from which other Sector Indexes and proprietary products are also excepted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are

²⁸ See Cboe Options Fees Schedule, Index Options Rate Table—All Index Products Excluding Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee and Specified Proprietary Index Options Rate Table—Underlying Symbol List A and Sector Indexes, CFLEX Surcharge Fee.

²⁹ See Cboe Options Fees Schedule, Order Router Subsidy Program and Complex Order Router Subsidy Program table and Footnotes 29 and 30.

³⁰ See Cboe Options Fees Schedule, Footnote 22.

²⁵ See Cboe Options Fees Schedule, Specified Proprietary Index Options Rate Table—Underlying Symbol A and Sector Indexes.

²⁶ See Cboe Options Fee Schedule, Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales Table. The maximum transaction fee per contract in the Table B (related to the VIX Sliding Scale) part of that table is \$0.25.

²⁷ *Id.*

assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market-Makers have quoting obligations that other market participants do not have. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SIXC options will be exclusively listed on Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³¹ and paragraph (f) of Rule 19b-4³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will 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. Please include File Number SR-CBOE-2019-002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2019-002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-002 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-02395 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85102; File No. SR-CBOE-2019-001]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f).

³³ 17 CFR 200.30-3(a)(12).

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 proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of "director independence," and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.⁵ The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of

the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,⁶ but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the "Common Stock"), on the Nasdaq Stock Market LLC ("Nasdaq") and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the

Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.⁹

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are

⁵ Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

⁶ This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. See Section 5.1 of Parent's Bylaws.

substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

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 not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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) by its terms, 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 operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),¹³ 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 proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will 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. Please include File Number SR-CBOE-2019-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2019-001. This file number should be included on the

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-001 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02397 Filed 2-14-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85095; File No. SR-NYSE-2019-02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Add a New Incentive for Supplemental Liquidity Providers in Tape A Securities When Adding Liquidity in Securities Traded Pursuant to Unlisted Trading Privileges

February 11, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ *Id.*

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 1, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to add a new incentive for Supplemental Liquidity Providers (“SLP”) in Tape A securities when adding liquidity in securities traded pursuant to Unlisted Trading Privileges (“UTP”) (Tapes B and C). The Exchange proposes to implement these changes to its Price List effective February 1, 2019. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to add a new incentive for SLPs in Tape A securities when adding liquidity in UTP Securities (Tapes B and C).

The Exchange proposes to implement these changes to its Price List effective February 1, 2019.

Proposed Rule Change

Currently, SLP Tier 1 provides that an SLP adding liquidity in Tape A

securities with a per share price of \$1.00 or more is eligible for a per share credit of \$0.0029 if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization)⁴ of an ADV⁵ of more than 0.90% of NYSE CADV, or with respect to an SLP that is also a Designated Market Maker (“DMM”) and subject to Rule 107B(i)(2)(a), more than 0.90% of NYSE CADV after a discount of the percentage for the prior quarter of NYSE.

CADV in DMM assigned securities as of the last business day of the prior month. The SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is \$0.0012.

The Exchange proposes an additional incentive to SLPs in Tape A securities under SLP Tier 1 for SLPs that meet the current requirements for SLP Provide Tier 1 in UTP Securities.

SLP Provide Tier 1 provides a \$0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% for Tape B and 0.075% for Tape C, (2) meets the 10% average or more quoting requirement in 400 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

The Exchange proposes that SLPs meeting the requirements of SLP Provide Tier 1 in UTP Securities would be eligible to qualify for the SLP Tier 1 adding rates where the SLP, in addition to meeting the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.75% of NYSE CADV or, with respect to SLPs that are also DMMs and subject to Rule 107B(i)(2)(a), more than 0.75% of NYSE CADV after a discount of the

⁴ Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

⁵ The defined term, “ADV,” is used here as defined in footnote 2 to the Price List.

percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Price List would refer to this as the “SLP Cross Tape Tier 1 Incentive.”

For example, assume an SLP averages an Adding ADV⁶ of 28 million shares a day in Tape A securities in the billing month where the NYSE CADV is 3.5 billion shares, for a percent adding of CADV of 0.80% in Tape A securities, which before the proposed change qualifies the SLP for SLP Tier 1A in Tape A securities by meeting the current 0.60% CADV requirement. Further assume that the SLP meets the requirements of SLP Provide Tier 1 in UTP Securities in both Tape B securities and Tape C securities. Under the proposed change, that SLP would be eligible for the lower SLP Tier 1 requirement for Tape A securities of 0.75% of CADV, which it would meet by having a percent adding CADV of 0.80%.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that lowering the ADV requirement to qualify for SLP Tier 1 in Tape A securities for SLPs that add liquidity in UTP Securities by meeting the SLP Provide Tier 1 requirements in both Tape B and Tape C securities is reasonable because it would further contribute to incenting member organizations to provide additional liquidity to a public exchange in UTP Securities, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that that the proposal is reasonable and not unfairly discriminatory because it would apply to all member

⁶ “Adding ADV” is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a DMM.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) & (5).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

organizations eligible for the relevant SLP Tier 1 credits equally.

The Exchange further believes that the proposal is reasonable and not unfairly discriminatory because, although the proposed alternative requirement is offered for members organizations qualifying for SLP Tier 1 and not for the SLP Non-Tier, Adding Tier 2, Adding Tier 3 and Adding Tier 4, the proposal will encourage SLPs that do not currently qualify for either the SLP Tier 1 in Tape A securities or the SLP Provide Tier 1 in UTP Securities to add additional liquidity in order to reach the SLP Tier 1 and SLP Provide Tier 1. The Exchange notes that SLPs qualifying for SLP Tier 2 in Tape A securities that receive a credit of \$0.0026 and that do not trade UTP Securities can qualify for the SLP Tier 1 credit of \$0.0029 by meeting the requirements for the SLP Step Up Tier 1 and thereby receive an additional \$0.0003 credit, for a combined adding credit of \$0.0029.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁹ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more

favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ 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)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-02 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02391 Filed 2-14-19; 8:45 am]

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⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85105; File No. SR–ICC–2018–011]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's New Initiatives Approval Policy and Procedural Framework

February 11, 2019.

I. Introduction

On December 18, 2018, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ a proposed rule change (SR–ICC–2018–011) to adopt a revised ICC New Initiatives Approval Policy and Procedural Framework (“NIA Policy”). The proposed rule change was published for comment in the **Federal Register** on December 28, 2018.² The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.³

II. Description of the Proposed Rule Change

ICC proposes to revise the NIA Policy, which sets forth ICC’s policies and procedures for the review and approval of certain new initiatives to be offered or implemented by ICC.⁴ The NIA Policy clarifies and harmonizes the policies, procedures, and documentation for the review and approval of new initiatives that involve potentially significant changes.⁵ The intention of the NIA Policy is to notify all relevant departments of the introduction of the new initiative, share information between departments, and establish requirements for the pre-launch verification and testing of the new initiative.⁶

New projects subject to the NIA policy are those that involve new and material changes to the risk or pricing methodology, significant changes to the processing system, significant changes to ICC rules, significant changes to clearing operating procedures, material

modifications to significant capabilities provided by ICC, or significant changes to models.⁷ A steering committee, comprised of members of management, is responsible for prioritizing new initiatives and guiding their implementation.⁸

The New Initiative Approval Committee (“NIAC”) identifies, reviews, and approves new initiatives and is a management committee that includes department heads, and representatives from Enterprise Risk, Quality Systems, and Systems Operations.⁹ The NIAC also determines the conditions, restrictions, and limitations of new initiatives.¹⁰ Additionally, the NIAC documents its process with an approval matrix, risk assessment, a form verifying that all conditions and restrictions have been satisfied prior to enactment of the new initiative, and a tracking log for the identification and review of new initiatives.¹¹ The NIAC also reviews initiatives after implementation to ensure compliance with any conditions.¹² The chair of the NIAC maintains the NIA Policy, ensures cooperation and coordination between the steering committee and NIAC, and brings material changes to the NIA Policy to the ICC board for review and approval.¹³

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹⁴ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹⁵ and Rules 17Ad–22(d)(4) and (d)(8) thereunder.¹⁶

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements,

contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.¹⁷ As discussed above, the proposed rule change would revise the NIA Policy, which sets forth, clarifies, and harmonizes ICC’s policies and procedures for approval of new initiatives that involve potentially significant changes, including initiatives that (1) involve new and material modifications to the risk or pricing methodology; (2) involve potential significant changes to the processing system, ICC Clearing Rules, or clearing operating procedures; (3) involve new and material modifications to existing and significant capabilities provided by ICC; or (4) involve Model Changes¹⁸ classified as Materiality A under ICC’s Model Validation Framework¹⁹ (collectively, “New Initiatives”). The Commission believes that, if not clearly and consistently identified, reviewed, and approved according to appropriate policies and procedures, such New Initiatives could pose operational or other risks to ICC.

The NIA Policy would clearly describe and formalize the roles of the key participants involved in identifying, reviewing, and ultimately approving any such potentially significant New Initiatives, and identify such participants’ specific authority and responsibilities. It also would identify, clearly describe, and formalize the specific steps to be taken during the identification, review, and approval of New Initiatives. By doing so, the Commission believes that the NIA Policy will enhance ICC’s ability to manage risks and avoid potential disruptions to operations related to New Initiatives, thereby enhancing ICC’s ability to ensure the prompt and accurate clearance and settlement of securities transactions. This, in turn, would enhance ICC’s ability to ensure it is in a better position to promptly clear and settle securities transactions and assure the safeguarding of securities and funds which are in the custody or control of ICC, or for which it is responsible. Therefore, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁰

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 34–84889 (December 20, 2018), 83 FR 67445 (December 28, 2018) (SR–ICC–2018–011) (“Notice”).

³ Capitalized terms used herein but not otherwise defined have the meaning set forth in the NIA Policy or the ICC rulebook, which is available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.

⁴ Notice, 83 FR at 67445.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 67445–67446.

¹⁰ *Id.* at 67446.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q–1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad–22(d)(4) and (d)(8).

¹⁷ 15 U.S.C. 78q–1(b)(3)(F).

¹⁸ Model Changes include new and enhanced risk modeling components of ICC’s risk management system. Depending on how substantially the Model Change affects the system’s assessment of risk for the related risk driver(s), it is classified as Materiality A (*i.e.*, substantial impact) or Materiality B (*i.e.*, no substantial impact).

¹⁹ Notice, 83 FR at 67445.

²⁰ 15 U.S.C. 78q–1(b)(3)(F).

B. Consistency With Rule 17Ad-22(d)(4)

Rule 17Ad-22(d)(4) requires, in relevant part, that a registered clearing agency that is not a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.²¹ The Commission believes that the NIA Policy would do this through establishing revised and clarified definitions, personnel responsibilities, and documentation procedures related to the identification, review, and approval of New Initiatives.

Specifically, the revised NIA Policy would ensure that ICC's system of approving New Initiatives defines such initiatives (as noted above) as being those that most significantly impact key areas and functions of ICC, and therefore helps ensure that ICC will appropriately address, and therefore enhance its ability to mitigate, the potential operational and other risks associated with implementing such New Initiatives. Further, by clearly identifying and transparently communicating the role of ICC's management across multiple departments and functions, the Commission believes that the NIA Policy would enhance ICC's ability to identify sources of operational risk by involving the most relevant and responsible parties in focusing on the most impactful initiatives.

Additionally, the revisions to the NIA Policy would create a system in which new initiatives would be assessed by relevant stakeholders throughout ICC and through which such assessments would be documented. For instance, the NIAC would utilize detailed matrixes and forms to evidence that requisite approvals for new initiatives were obtained, risks and mitigation plans were considered, and all appropriate conditions were met prior to the implementation of a New Initiative. The Commission believes that such documentation would enhance ICC's ability to minimize operational risk by requiring thorough reviews and justifications of its actions. As a result, the Commission finds that the proposed rule, taken as a whole, enhances ICC's process of identifying and minimizing sources of operational risk associated with New Initiatives and is consequently consistent with Rule 17Ad-22(d)(4).²²

²¹ 17 CFR 240.17Ad-22(d)(4).

²² *Id.*

C. Consistency With Rule 17Ad-22(d)(8)

Rule 17Ad-22(d)(8)²³ requires, in relevant part, that a registered clearing agency implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.²⁴ The NIA Policy proposed by ICC describes the roles of key participants in the identification, review, approval, and assessment of new initiatives. In particular, the NIA Policy describes the steering committee's role in prioritizing the implementation of initiatives as well as NIAC's role and composition, including the participation of the heads of departments and representatives of Enterprise Risk, Quality Systems, and Systems Operations. Additionally, the proposal clarifies that the NIA Policy contains procedures for notifying and seeking input from all relevant departments on the introduction of New Initiatives. By setting forth clearly delineated managerial roles and requiring information sharing across ICC related to New Initiatives, the Commission finds that the proposed rule change enhances and fosters governance arrangements that are clear and transparent and is therefore consistent with the requirements of Rule 17Ad-22(d)(8).²⁵

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular with the requirements of Section 17A of the Act²⁶ and Rules 17Ad-22(d)(4) and 17Ad-22(d)(8)²⁷ thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act²⁸ that the proposed rule change (SR-ICC-2018-011) be, and hereby is, approved.²⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Eduardo A. Aleman,
Deputy Secretary.

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²³ 17 CFR 240.17Ad-22(d)(8).

²⁴ 15 U.S.C. 78q-1.

²⁵ 17 CFR 240.17Ad-22(d)(8).

²⁶ 15 U.S.C. 78q-1.

²⁷ 17 CFR 240.17Ad-22(d)(4) and (d)(8).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85101; File No. SR-C2-2019-001]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of "director independence," and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.⁵ The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of

the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,⁶ but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the "Common Stock"), on the Nasdaq Stock Market LLC ("Nasdaq") and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the

Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.⁹

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are

⁵ Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

⁶ This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. See Section 5.1 of Parent's Bylaws.

substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

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 not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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) by its terms, 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 operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),¹³ 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 proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will 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. Please include File Number SR-C2-2019-001 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-C2-2019-001. This file number should be included on the

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2019-001 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02396 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85088; File No. SR-NYSEArca-2019-02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF Under NYSE Arca Rule 8.200-E

February 11, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ *Id.*

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 28, 2019, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 list and trade the shares of the following under NYSE Arca Rule 8.200-E, Commentary .02 (“Trust Issued Receipts”): ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF (each a “Fund” and, collectively, the “Funds”).⁴

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options

Each Fund is a series of the ProShares Trust II (the “Trust”), a Delaware statutory trust.⁵ The Trust and the Funds are managed and controlled by ProShare Capital Management LLC (“ProShare Capital” or the “Sponsor”). ProShare Capital is registered as a commodity pool operator (“CPO”) with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).⁶

In its capacity as the Custodian for the Funds, the Bank of New York Mellon (“BNYM”) may hold the Funds’ securities and cash and/or cash equivalents pursuant to a custodial agreement (the “Custodian”). The Custodian is also the transfer agent for the Shares. In addition, in its capacity as Administrator for the Funds, BNYM (the “Administrator”) performs certain administrative and accounting services for the Funds and prepares certain Commission, NFA and CFTC reports on behalf of the Funds. In its capacity as Distributor for the Funds, SEI Investments Distribution Co. performs functions and duties relating to distribution and marketing.

ProShares UltraPro 3x Natural Gas ETF

According to the Registration Statement, the investment objective of the Fund is to seek daily investment results, before fees and expenses, that correspond to three times (3x) the performance of the Bloomberg Natural Gas SubindexSM (the “Benchmark”).⁷

on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁵ The Trust is registered under the Securities Act of 1933. On May 19, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) relating to the Funds (File No. 333-218136) (the “Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement.

⁶ The Commission has previously approved listing of Trust Issued Receipts based on natural gas on the American Stock Exchange LLC (now known as NYSE American LLC) and NYSE Arca. *See, e.g.*, Securities Exchange Act Release Nos. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (order approving listing and trading of shares of United States Natural Gas Fund, LP); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR-Amex-2007-98) (order approving listing and trading of shares of United States 12 Month Oil Fund, LP and United States 12 Month Natural Gas Fund, LP); 63753 (January 21, 2011), 76 FR 4963 (January 27, 2011) (SR-NYSEArca-2010-110) (order approving listing and trading of shares of Teucurus Natural Gas Fund); and 65136 (August 15, 2011), 76 FR 52037 (August 19, 2011) (SR-NYSEArca-2011-24) (order approving listing and trading of shares of ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas).

⁷ According to the Registration Statement, the Benchmark is a “rolling index,” which means that the Index performance includes the impact of

The Fund seeks to achieve its investment objective for a single day, not for any other period.⁸

The Benchmark is intended to reflect the performance of a rolling position in natural gas futures contracts listed on the New York Mercantile Exchange (the “NYMEX”, which is part of the CME Group, Inc. (“CME”)), including the impact of rolling, without regard to income earned on cash positions.

ProShares UltraPro 3x Short Natural Gas ETF

According to the Registration Statement, the investment objective of the Fund is to seek daily investment results, before fees and expenses, that correspond to three times the inverse (– 3x) of the performance of the Benchmark. The Fund seeks to achieve its investment objective for a single day, not for any other period.

Investment Strategies of the Funds

In seeking to achieve the Funds’ investment objectives, the Sponsor will utilize a mathematical approach to determine the type, quantity and mix of investment positions that ProShare Capital believes, in combination, should produce daily returns consistent with the Funds’ respective objectives.

Each Fund will seek to meet its respective investment objective by investing, under normal market conditions,⁹ in futures contracts traded in the United States and listed options on such contracts (together, the “Futures Contracts”).¹⁰ The Funds will not invest directly in natural gas. The Funds’ investments in Futures Contracts will be used to produce economically

closing out futures contracts that are nearing expiration and replacing them with futures contracts with later expirations. This process is commonly referred to as “rolling.”

⁸ According to the Registration Statement, the return of a Fund for a period longer than a single trading day is the result of its return for each day compounded over the period and thus will usually differ from a Fund’s multiple times the return of the Benchmark for the same period.

⁹ The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.*, systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. *See* NYSE Arca Rule 8.600-E(c)(5).

¹⁰ According to the Registration Statement, a Futures Contract is a standardized contract traded on, or subject to the rules of, an exchange that calls for the future delivery of a specified quantity and type of a particular underlying asset at a specified time and place or alternatively may call for cash settlement. The notional size and calendar term Futures Contracts on a particular underlying asset are identical and are not subject to any negotiation, other than with respect to price and the number of contracts traded between the buyer and seller.

“leveraged” or “inverse leveraged” investment results for the Funds.

Each Fund also may obtain exposure to the Benchmark through investment in over-the-counter (“OTC”) swap transactions and forward contracts referencing such Benchmark (“Financial Instruments”). For example, a Fund may invest in Financial Instruments in the event position, price or accountability limits are reached with respect to Futures Contracts¹¹ or exposure limits are reached with a particular futures commission merchant (“FCM”) or if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell Futures Contracts (such as during periods of market volatility or illiquidity).

Each Fund will also hold cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements), pending investment in Futures Contracts or Financial Instruments or as collateral for the Funds’ investments.

In addition, to the extent a Fund enters into swap agreements and other over-the-counter transactions, it will do so only with large, established and well capitalized financial institutions that meet the Sponsor’s credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.

The Funds do not intend to hold Futures Contracts through expiration, but instead intend to “roll” or close their respective positions before expiration. When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the “rolling process” of the more nearby contract would take place at a price that is lower than the price of the more distant contract. This pattern of higher

¹¹ According to the Registration Statement, many designated contract markets, such as the NYMEX, have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control may hold, own or control. In addition, NYMEX also sets price fluctuation limits on futures contracts. Options do not have individual price limits but rather are linked to the price limit of Futures Contracts.

futures prices for longer expiration Futures Contracts is referred to as “contango.” Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the “rolling process” of the more nearby contract would take place at a price that is higher than the price of the more distant contract. This pattern of higher futures prices for shorter expiration Futures Contracts is referred to as “backwardation.” The presence of contango in certain Futures Contracts at the time of rolling could adversely affect a Fund with long positions, and positively affect a Fund with short positions. Similarly, the presence of backwardation in certain Futures Contracts¹² at the time of rolling such contracts could adversely affect a Fund with short positions and positively affect a Fund with long positions.

Net Asset Value (“NAV”)

According to the Registration Statement, a Fund’s per Share NAV will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the total number of outstanding Shares.

Each Fund’s NAV will be calculated on each day other than a day when the Exchange is closed for regular trading. The Funds typically compute their NAVs as of 2:30 p.m. Eastern Time (“E.T.”), which is the designated closing time of the natural gas futures listed on NYMEX,¹³ or an earlier time as set forth on *www.ProShares.com*, if necessitated by NYSE, the Exchange or other exchange material to the valuation or operation of such Fund closing early. Each Fund’s NAV is calculated only once each trading day.

In calculating the NAV of a Fund, Futures Contracts generally are valued at their then current market value, which typically is based upon the settlement price or the last traded price

¹² The Funds may invest in options on Futures Contracts. Unlike Futures Contracts, which the Funds intend to roll before expiration, the Funds intend to hold “in-the-money” options on Futures Contracts to expiration. The Funds would exercise in-the-money options on Futures Contracts at expiration of the options contract and they would settle through receipt or delivery of the underlying Futures Contracts. Out-of-the-money options will be held to expiration and will be expired worthless. Options on Futures Contracts are subject to the effects of contango and backwardation to the same general extent as their underlying Futures Contracts.

¹³ The daily value of the Benchmark is calculated as of 2:30 p.m. E.T. to coincide with the designated closing time. Futures Contracts, however, continue to trade past 2:30 p.m. E.T. and through the end of the NYSE Arca Core Trading Session at 4 p.m. E.T.

before the NAV time, for that Futures Contract. The settlement value of a Fund’s non-exchange traded Financial Instruments generally is determined by applying the then-current disseminated levels for the Benchmark underlying such Financial Instrument to the terms of such Fund’s non-exchange traded Financial Instruments.

In certain circumstances (e.g., if the Sponsor believes market quotations do not accurately reflect fair value of an investment, or a trading halt closes an exchange or market early), the Sponsor may, in its sole discretion, choose to determine a fair value price as the basis for determining the market value of an investment for such day. Such fair value price would generally be determined based on available inputs about the current value of the investment and would be based on principles that the Sponsor deems fair and equitable.

Money market instruments held by a Fund generally will be valued using market prices or at amortized cost.

Indicative Fund Value

In order to provide updated information relating to a Fund for use by investors and market professionals, the Exchange will calculate an updated “Indicative Fund Value” (“IFV”). The IFV will be calculated by using the prior day’s closing NAV per Share of a Fund as a base and will be updating throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the approximate aggregate per Share value of the investments held by a Fund based on the most recently available prices for the Fund’s investments.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.¹⁴

Creation and Redemption of Shares

According to the Registration Statement, each Fund intends to create and redeem Shares in one or more “Creation Units” of 25,000 Shares each.

¹⁴ Several major market data vendors display and/or make widely available IFVs taken from the CTA or other data feeds. In addition, circumstances may arise in which the NYSE Arca Core Trading Session is in progress, but trading in Futures Contracts is not occurring. Such circumstances may result from reasons including, but not limited to, a futures exchange having a separate holiday schedule than the NYSE Arca, a futures exchange closing prior to the close of the NYSE Arca, price fluctuation limits being reached in Futures Contracts, or a futures exchange imposing any other suspension or limitation on trading in Futures Contracts. In such instances, the IFV would be static or priced at the applicable early cut-off time of the exchange trading the applicable Futures Contracts.

The size of the Creation Units is subject to change. Creation Units in a Fund are expected to be created when there is sufficient demand for Shares in such Fund that the market price per Share is at a premium to the NAV per Share. A creation transaction generally takes place when an Authorized Participant deposits a specified amount of cash in exchange for a specified number of Creation Units. Similarly, Shares can be redeemed only in Creation Units, and generally only for cash. The prices at which creations and redemptions occur are based on the next calculation of the NAV after an order is received.

“Authorized Participants” will be the only persons that may place orders to create and redeem Creation Units. An Authorized Participant is an entity that has entered into an Authorized Participant Agreement with the Trust and ProShare Capital.

Creation Procedures

On any “Business Day”, an Authorized Participant may place an order with the Distributor to create one or more Creation Units. For purposes of processing both purchase and redemption orders, a “Business Day” for each Fund means any day on which the NAV of such Fund is determined. Purchase and redemption orders for Creation Units must be placed by 2:00 p.m. E.T. or earlier if NYSE Arca or other exchange material to the valuation or operation of such Fund closes before the cut-off time.¹⁵ The day on which the Distributor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an Authorized Participant generally agrees to deposit cash with the Custodian.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units will mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units.

¹⁵ The 2:00 p.m. E.T. creation and redemption cut-off time is designed to provide the Funds with sufficient time prior to the NAV calculation time to assess the potential impact of creation and redemption activity on a Fund’s portfolio and to buy (or sell) Futures Contracts or other Financial Instruments in an orderly fashion and in a manner designed to position the Fund’s portfolio so that its exposure to the Benchmark is consistent with its daily investment objective.

The redemption procedures allow Authorized Participants to redeem Creation Units. Individual shareholders may not redeem directly from a Fund. By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through DTC’s book entry system to the applicable Fund not later than noon E.T. on the first Business Day immediately following the redemption order date (T+1). ProShare Capital can extend the deadline for a Fund to receive the Creation Units required for settlement up to the third Business Day following the redemption order date (T+3).

Upon request of an Authorized Participant made at the time of a redemption order, ProShare Capital may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to a futures contract for related position (“EFCRP”) or to a block trade sale of futures contracts to the Authorized Participant.

Determination of Redemption Distribution

The redemption proceeds from a Fund will consist of the cash redemption amount and, if permitted by ProShare Capital with respect to a Fund, an EFCRP or block trade with the relevant Fund as described above. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of such Fund requested in the Authorized Participant’s redemption order as of the time of the calculation of such Fund’s NAV on the redemption order date. The Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T.

Availability of Information

The NAV for the Funds’ Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices of the Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors.

Complete real-time data for the Futures Contracts is available by subscription through on-line information services. ICE Futures U.S. and NYMEX also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Futures Contracts are also available on

such websites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Quotation information for cash equivalents and OTC swaps may be obtained from brokers and dealers who make markets in such instruments. Quotation information for exchange-traded swaps will be available from the applicable exchange and major market vendors. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The IFV will be available through on-line information services.

In addition, the Funds’ website, www.ProShares.com, will display the applicable end of day closing NAV. The daily holdings of each Fund will be available on the Funds’ website. The Funds’ website will also include a form of the prospectus for the Funds that may be downloaded. The website will include the Shares’ ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) Daily trading volume, the prior Business Day’s reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the “Bid/Ask Price”) against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, value, expiration and strike price of Futures Contracts and Options, (ii) the counterparty to and value of swap agreements and forward contracts, and (iii) the aggregate net value of other assets (*i.e.*, Treasury securities, cash equivalents and cash) held in each Fund’s portfolio, if applicable.

The Funds’ website will be publicly available at the time of the public offering of Shares and accessible at no charge. The spot price of natural gas also is available on a 24-hour basis from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.¹⁶ Trading in Shares of a Fund

¹⁶ See NYSE Arca Rule 7.12-E.

will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. If the interruption to the dissemination of the IFV, or the value of the or the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3¹⁷ under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of each Fund will be

subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁸ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain Futures Contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain Futures Contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain Futures Contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).¹⁹ The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying Futures Contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in Futures Contracts)

¹⁸ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹⁹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of a Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

occurring on U.S. futures exchanges, which are members of the ISG.

Not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Funds or Benchmark, (b) limitations on portfolio holdings or the Benchmark, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (7) trading information, and (8) NYSE Arca suitability rules.

Further, the Exchange states that FINRA has implemented increased sales

¹⁷ 17 CFR 240.10A–3.

practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inverse leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009), and 09–65 (November 2009) (collectively, “FINRA Regulatory Notices”). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, each Fund will seek daily investment results, before fees and expenses, that correspond to either three times (3x) or three times the inverse (– 3x) of the performance of the Benchmark. The return of a Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from the Fund’s stated multiple times the return of the Fund’s Benchmark for the same period. These differences can be significant.

The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 2:30 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Funds’ website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in

the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain Futures Contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain Futures Contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain Futures Contracts from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying Futures Contracts through ETP Holders, in connection with such ETP Holders’ proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in Futures Contracts) occurring on U.S. futures exchanges, which are members of the ISG. Not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. The intraday, closing prices, and settlement prices of the Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information services.

Complete real-time data for the Futures Contracts is available by subscription from on-line information services. ICE Futures U.S. and NYMEX also provide delayed futures information on current and past trading sessions and market news free of charge on the Funds’ website. The specific contract specifications for Futures Contracts are also available on such websites, as well as other financial informational sources. Information regarding options will be available from the applicable exchanges or major market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every

15 seconds during the Exchange’s Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Funds’ website will also include a form of the prospectus for the Funds that may be downloaded. The website will include the Shares’ ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) Daily trading volume, the prior business day’s reported NAV and closing price, and a calculation of the premium and discount of the closing price or midpoint of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, value, expiration and strike price of Futures Contracts and Options, (ii) the counterparty to and value of swap agreements and forward contracts, and (iii) the aggregate net value of other assets (*i.e.* Treasury securities, cash equivalents and cash) held in each Fund’s portfolio, if applicable.

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares and of the suitability requirements of NYSE Arca Rule 9.2–E(a). The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to a Fund. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of Futures Contracts traded on U.S. markets. The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 2:30 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Funds’ website.

Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been

²⁰ 15 U.S.C. 78f(b)(5).

reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Trust Issued Receipts based on natural gas prices that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of Trust Issued Receipts based on natural gas prices and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-02 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-2019-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-02, and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02377 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

²¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85094; File No. SR-NYSEARCA-2019-05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

February 11, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 31, 2019, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 the NYSE Arca Equities Fees and Charges (the "Fee Schedule"). The Exchange proposes to implement the proposed fee change on February 1, 2019. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the Exchange's tiered-rebate structure applicable to Lead Market Makers ("LMMs")⁴ and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity in Tape B Securities to the NYSE Arca Book. The Exchange proposes to implement the proposed fee change on February 1, 2019.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B Securities to the NYSE Arca Book.⁵ Specifically, LMMs that are registered as the LMM in Tape B Securities that have a consolidated average daily volume ("CADV") in the previous month of less than 100,000 shares, or 0.0070% of Consolidated Tape B ADV, whichever is greater ("Less Active ETP Securities"), and the ETP Holders and Market Makers affiliated with such LMMs, currently receive an additional credit for orders that provide displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.⁶ The current incremental credits and volume thresholds are as follows:

- An additional credit of \$0.0004 per share if an LMM is registered as the LMM in at least 300 Less Active ETP Securities
- An additional credit of \$0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 300 Less Active ETP Securities
- An additional credit of \$0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities
- An additional credit of \$0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities

The number of Less Active ETP Securities for the billing month is based

⁴ The term "Lead Market Maker" is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

⁵ See Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR-NYSEArca-2015-87); and 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR-NYSEArca-2016-165).

⁶ The Exchange defines "affiliate" to "mean any ETP Holder under 75% common ownership or control of that ETP Holder." See Fee Schedule, NYSE Arca Marketplace: General.

on the number of Less Active ETP Securities in which an LMM is registered as the LMM on the average of the first and last business day of the previous month.

The Exchange proposes to amend the CADV criteria for Less Active ETP Securities. As proposed, a Less Active ETP Security would be a Tape B Security that has a CADV in the previous month of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, whichever is greater.

The Exchange is not proposing any change to the level of the incremental credits and volume thresholds noted above that are payable to LMMs and to ETP Holders and Market Makers affiliated with the LMM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) of the Act,⁸ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest [sic] is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to the CADV criteria for Less Active ETP Securities is consistent with Section 6(b)(4) and 6(b)(5) of the Act in that it is fair, equitable and not unfairly discriminatory because it would apply equally to all LMMs and to ETP Holders and Market Makers affiliated with the LMM. All LMMs and ETP Holders and Market Makers affiliated with the LMM are subject to the same fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange further believes that the proposed rule change

is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the fee program.

The Exchange believes that the proposed change to the CADV criteria for Less Active ETP Securities is consistent with Section 6(b)(5) of the Act in that it promotes equitable access to the Exchange for all market participants. To the extent that LMM volume is increased by the proposed rule change, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders to the Exchange. The resulting volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads.

The specific CADV criteria is set based upon business determinations and an analysis of current volume levels. The proposed fee change is intended to encourage LMMs and ETP Holders and Market Makers affiliated with such LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants.

The CADV criteria is intended to continue to incentivize LMMs and ETP Holders and Market Makers affiliated with the LMM to increase the orders they send to the Exchange for the benefit of all market participants. Increasing the number of orders sent to the Exchange would in turn provide tighter and more liquid markets, and therefore attract more business overall. The proposed rule change is intended to encourage participation from a greater number of LMMs, which would promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. Additionally, volume-based rebates such as the ones currently in place on the Exchange have been widely adopted in the cash equities markets and are equitable because they are open to all LMMs and ETP Holders and Market Makers affiliated with such LMMs on an equal basis and provides additional benefits that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The incremental credits applicable to Less Active ETP Securities is intended to promote narrower spreads and encourage the posting of liquidity, and thus promote better prices. The proposed rule change should encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders and Market Makers affiliated with LMMs. Additionally, the proposed rule change should allow the Exchange to continue to attract and compete for order flow in Tape B Securities with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that this proposal promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2019-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2019-05 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-02390 Filed 2-14-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85103; File No. SR-CboeEDGX-2019-001]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Ninth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019, 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend the Exchange's Ninth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

Markets, Inc. (“Cboe” or the “Parent”). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

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 proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of “director independence,” and (3) make a non-substantive update to the zip code for the registered office the Corporation.

Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.⁵ The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the

⁵ Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,⁶ but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the “Common Stock”), on the Nasdaq Stock Market LLC (“Nasdaq”) and to designate BZX as the primary listing venue for Parent’s Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent’s registered agent from 19805 to 19801.

⁶ This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

This change is in accordance with an update from the U.S. Postal Service.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.⁹

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ The proposed change also conforms this provision to the corresponding provision in Parent’s Bylaws. See Section 5.1 of Parent’s Bylaws.

multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

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 not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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) by its terms, 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 operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),¹³ 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 proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will 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:

¹² *Id.*

¹³ *Id.*

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2019-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2019-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-001 and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02398 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85099; File No. SR-CboeBZX-2019-001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Under Rule 14.11(c)(3) Shares of the Global X Russell 2000 Covered Call ETF of Global X Funds

February 11, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 submits this proposal to list and trade under Rule 14.11(c)(3) shares of the Global X Russell 2000 Covered Call ETF (the “Fund”) of Global X Funds (the “Trust”).

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 list and trade shares (“Shares”) of the Fund under BZX Rule 14.11(c)(3),³ which governs the listing and trading of index fund shares based on an index composed of U.S. Component Stocks.⁴ The Exchange notes that the Commission has previously approved a fund that employs a very similar strategy.⁵

The Shares are offered by Global X Funds, which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.⁶ The investment adviser and administrator to the Fund is Global X Management Company LLC (the “Adviser” or “Administrator”).⁷

SEI Investments Distribution Co. (the “Distributor”) is the principal underwriter and distributor of the Shares. Brown Brothers Harriman & Co. (the “Custodian” or “Transfer Agent”) will serve as custodian and transfer agent for the Fund.

³ The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁴ Rule 14.11(c)(1)(D) provides that the term “U.S. Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act.

⁵ See Securities Exchange Act Release No. 68708 (January 23, 2013), 78 FR 6161 (January 29, 2013) (SR-NYSEArca-2012-131) (order granting approval of proposed rule change relating to listing and trading of shares of the Horizons S&P 500 Covered Call ETF).

⁶ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On December 20, 2018, the Trust filed with the Commission an amendment to its Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-151713 and 811-22209) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29852 (October 28, 2011) (File No. 812-13830).

⁷ The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding said portfolio.

As described below, the Fund will seek investment results that, before fees and expenses, generally correspond to the performance of the Cboe Russell 2000 BuyWrite V2 Index (the “Underlying Index”) provided by FTSE Russell (the “Index Provider”).⁸ The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Russell 2000 Index⁹ (the “Reference Index”), and “writes” (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until expiration. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell.¹⁰

The Exchange is submitting this proposed rule change because the Underlying Index for the Fund does not meet all of the “generic” listing requirements of Rule 14.11(c)(3)(A)(i) applicable to the listing of Index Fund Shares based upon an index of U.S. Component Stocks. Specifically, Rule 14.11(c)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of U.S.

⁸ The Underlying Index is provided by the Index Provider, which is unaffiliated with the Fund or the Adviser. The Index Provider maintains, calculates and publishes information regarding the Underlying Index. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index.

⁹ The Exchange notes that the Russell 2000 Index has been previously approved by the Commission under Section 19(b)(2) of the Act in connection with the listing and trading of FLEX Options and Quarterly Index Options, as well as other securities. See, e.g., Securities Exchange Act Release Nos. 32694 (July 29, 1993), 58 FR 41814 (July 5, 1993) (approving the listing and trading of FLEX Options based on the Russell 2000 Index); 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (approving the listing and trading of Quarterly Index Option based on the Russell 2000 Index). Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the Russell 2000 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index [sic] meet all of the requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3), except the requirements in Rule 14.11(c)(3)(A)(i)(a)-(e), as the Index [sic] consists of options on U.S. Component Stocks. The Russell 2000 Index consists of U.S. Component Stocks and satisfies the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e).

¹⁰ The Underlying Index methodology is available at <http://www.cboe.com/products/strategy-benchmark-indexes/buywrite-indexes/cboe-russell-2000-buywrite-index-bxr>. The Index Provider may amend the methodology from time to time. In such case, the methodology would be updated accordingly on the website.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Component Stocks. As further described below, the Underlying Index consists of the constituent securities of the Russell 2000 Index and options on the Russell 2000 Index. The Underlying Index meets all the requirements of Rule 14.11(c)(3)(A)(i) except that the Underlying Index includes call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, the Underlying Index is comprised solely of Russell 2000 companies and includes an exposure to call options on the Reference Index. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Exchange, Inc. (“Cboe Options”). Notwithstanding that the Underlying Index does not meet all of the generic listing requirements of Rule 14.11(c)(3)(A)(i), the Exchange believes that the Underlying Index is sufficiently broad-based enough to deter potential manipulation in that the Reference Index stocks are among the most actively traded, highly capitalized stocks traded in the U.S.

The Underlying Index

According to the Registration Statement, the Global X Russell 2000 Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund’s Underlying Index, which is the Cboe Russell 2000 BuyWrite V2 Index. The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Reference Index, and “writes” (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the applicable expiration date. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell. The Underlying Index is comprised of all the equity securities in the Reference Index and a succession of short (written) one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the expiration date.

The Fund

According to the Registration Statement, in seeking to track the Underlying Index, the Fund follows a “buy-write” (also called a covered call) investment strategy on the Reference Index in which the Fund purchases the component securities of the Reference

Index or purchases other investments (including other ETFs)¹¹ that have economic characteristics that are substantially identical to the economic characteristics of such component securities, and also writes (or sells) call options that correspond to the Reference Index. The Fund uses this strategy in an attempt to enhance its portfolio’s risk-adjusted returns, reduce its volatility, and generate monthly income from the premiums received from writing the call options. According to the Registration Statement, the Fund will invest at least 80% of its total assets in securities that comprise its Underlying Index or in investments that have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate.

According to the Registration Statement, the Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser’s strategy will consist of holding an equity portfolio (including ETFs) indexed to the Reference Index and writing (selling) covered call options on the Reference Index.¹² The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

According to the Registration Statement, the Fund will generally use a representative sampling methodology, meaning it will invest in a representative sample of securities that collectively has an investment profile similar to the Underlying Index in terms

¹¹ For purposes of this filing, ETFs include index fund shares (as described in BZX Rule 14.11(c)); Portfolio Depositary Receipts (as described in BZX Rule 14.11(b)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹² A covered call strategy is generally considered to be an investment strategy in which an investor buys a security, and sells a call option that corresponds to the security. In return for a premium, the Fund will give the purchaser of the option written by the Fund either the right to buy the security from the Fund at an exercise price or the right to receive a cash payment equal to the difference between the value of the security and the exercise (or “strike”) price, if the value is above the exercise price on or before the expiration date of the option. In addition, the covered call options hedge against a decline in the price of the securities on which they are written to the extent of the premium the Fund receives. A covered call strategy is generally used in a neutral-to-bullish market environment, where a slow and steady rise in market prices is anticipated.

of key risk factors, performance attributes and other characteristics.

According to the Registration Statement, the Fund will concentrate its investments (*i.e.*, hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be diversified under the 1940 Act.

Investment Guidelines

According to the Registration Statement, the Fund will write (sell) call options on the Reference Index to the same extent as such short call options are included in its Underlying Index.

The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the Commodity Exchange Act (“CEA”).

Other Investments

The Fund may also hold up to 20% of its net assets in cash and Cash Equivalents,¹³ shares of non-exchange traded registered open-end investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act (“Mutual Funds”),¹⁴ futures, listed options, and U.S. listed equities that are not included in the underlying [sic] index, but which the Adviser believes will help the Fund track the Underlying Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).¹⁵ The Fund will monitor

¹³ As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

¹⁴ The Fund will not invest in leveraged (e.g. 2x, -2x, 3x, or -3x) Mutual Funds.

¹⁵ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote

its portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets.

The Fund will seek to qualify for treatment as a regulated investment company ("RIC") under the Code.¹⁶

Availability of Information

The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other

identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website and information will be publicly available at no charge. The value, components, and percentage weightings of the Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Underlying Index are available on the Exchange's website and in the Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the "Intraday Indicative Value" (the "IIV"), that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the IIV will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.¹⁷

The dissemination of the IIV, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares will be available via the CTA high speed line and, for the securities held by the Fund, will be available from the exchange on which they are listed. Quotation and last sale information for options contracts held by the Fund will be available via the Options Price Reporting Authority. The intra-day, closing, and settlement prices of the portfolio instruments, including equities, ETFs, futures, and options, will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information for Cash Equivalents will be available from major market data vendors. Mutual Funds are typically priced once each

business day and their prices will be available through the applicable fund's website or from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares the Fund inadvisable. If the IIV and index value are not being disseminated for the Fund as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Exchange will halt trading. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. Eastern Time and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the exchange traded fund ("ETF"). See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

¹⁶ 26 U.S.C. 851.

¹⁷ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the Consolidated Tape Association ("CTA") or other data feeds.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG")¹⁸ and may obtain trading information regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying [sic] equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3¹⁹ under the Exchange Act, as provided by generic listing standards under Rule 14.11(c)(4) and the continued listing standards under Rule 14.11(c). A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange represents that, except for the exceptions to BZX Rule 14.11(c) described above, the Fund and Shares will satisfy all applicable requirements for Index Fund Shares under Rule 14.11(c), including the requirements related to the net asset value ("NAV") per Share being calculated daily and made available to all market participants at the same time, intraday indicative value, suspension of trading or removal, trading halts, disclosure, and firewalls.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the portfolio holdings is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening²⁰ and After Hours Trading Sessions²¹ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and

interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Index Fund Shares based on an index composed of U.S. Component Stocks in Rule 14.11(c)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares, underlying equities

¹⁸ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁹ 17 CFR 240.10A-3.

²⁰ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

²¹ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(5).

(including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying [sic] equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

The Adviser is affiliated with broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Options, a U.S. national options exchange and member of ISG.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV and the Underlying Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. If the IIV or the Underlying Index value of a Fund is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Underlying Index value occurs. If the interruption to the dissemination of the

applicable IIV or Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading. In addition, if the Exchange becomes aware that the NAV of a Fund is not being disseminated to all market participants at the same time, it will halt trading in the relevant Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website [sic] the securities and other financial instruments in the Fund's portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange will halt trading in the Shares under the conditions specified in Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, the equity securities (including ETFs), futures, and options in which the Fund will invest will trade in markets that are ISG members. Additional information regarding the Underlying and Reference Indices' components and their percentage weights will be available from the Index Provider and major market data vendors. In addition, quotation and last sale information for the components of the Underlying and Reference Indices will be available from the exchanges on which they trade. The intra-day, closing and settlement prices of the portfolio instruments will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other

public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Underlying Index's value, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Index Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares, the underlying equities (including ETFs), futures, and options contracts and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, relevant Underlying Index value, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional series of Index Fund Shares on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or
 B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2019-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-001, and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-02394 Filed 2-14-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85093; File No. SR-NYSEArca-2019-01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E

February 11, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on January 28, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "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 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 list and trade shares of the Bitwise Bitcoin ETF Trust under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the Bitwise Bitcoin ETF Trust (the "Trust"), under NYSE Arca Rule 8.201-E.⁴

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,⁵ and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.⁶

The Trust is managed and controlled by Bitwise Investment Advisers, LLC (the "Sponsor").

The custodian for the Trust may hold the Trust's investment assets and cash and cash equivalents pursuant to a custodian agreement. The custodian is also the transfer agent for the Trust.

The Trust will offer Shares of the Trust for sale through the Trust's distributor in "Creation Units", as described below. The distributor will also assist the Sponsor and the Trust's administrator with certain functions and duties relating to distribution and marketing.

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.⁷

Operation of the Trust⁸

According to the Registration Statement, the investment objective of the Trust is to reflect the performance of the total returns available to investors in bitcoin, as measured by the performance of the Bitwise Bitcoin Total Return Index (the "Index"), less fees and expenses. The Index was designed by Bitwise Index Services, LLC (the "Index Provider") to measure the total return of an investment in bitcoin utilizing bitcoin price transactions from 10

⁴ The Trust is a Delaware statutory trust and registered under the Securities Act of 1933. On January 10, 2018 [sic], the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act") relating to the Trust (File No. 333-229180) (the "Registration Statement"). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

⁵ 15 U.S.C. 80a-1.

⁶ 17 U.S.C. 1.

⁷ With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

⁸ The description of the operation of the Trust, the Shares and the bitcoin market contained herein are based, in part, on the Registration Statement. See note 4, *supra*.

exchanges that offer trading on cryptocurrencies (the “Verified Exchanges”) spanning 5 countries and including exchanges located in the United States, Europe and Asia. The methodology and composition of the Index is described more fully below.⁹

The Trust will seek to achieve its investment objective of tracking the Index by investing, under normal market conditions,¹⁰ substantially all of the Trust’s assets in OTC and exchange-traded bitcoin.

The Trust will not hold or trade in any instrument or asset on any futures exchange or over the counter (“OTC”) other than bitcoin traded in the OTC markets and traded on domestic and international bitcoin exchanges.

Overview of Bitcoin

Bitcoin is a new type of digital asset issued by, and transmitted through, the decentralized, open source protocol of the bitcoin peer-to-peer network (the “Bitcoin Network”) that hosts a public transaction ledger where bitcoin transfers are recorded (the “Bitcoin Blockchain”). Bitcoin is “stored” or reflected on the Bitcoin Blockchain, which through the transparent reporting of bitcoin transactions, allows the Bitcoin Network to verify and confirm the rightful ownership of the bitcoin assets. The Bitcoin Network and bitcoin software programs can interpret the Bitcoin Blockchain to determine the exact bitcoin balance, if any, of any digital wallet listed in the Bitcoin Blockchain as having taken part in a transaction on the Bitcoin Network. The Bitcoin Blockchain is comprised of a digital file, which can be downloaded and stored, in whole or in part, on any Bitcoin users’ software programs. Each validated bitcoin transaction is broadcast to the Bitcoin Network and permanently recorded on the Bitcoin Blockchain.

⁹ The Index Provider manages the Index with input from its Bitwise Global Investable Market Crypto Index Committee (the “Committee”), which has ultimate responsibility and authority for developing, maintaining and adjusting the Index. The Committee is composed of three members of the Bitwise leadership team selected for seniority and expertise in indexing, cryptoassets and data engineering. The Committee is advised in this effort by the Bitwise Global Investable Market Crypto Index Advisory Board (the “Advisory Board”), an independent group of leading experts in the fields of both traditional asset indexing and crypto assets.

¹⁰ The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

The process by which bitcoin are created and bitcoin transactions are verified is called “mining.” To begin mining, a user, or “miner,” can download and run a mining client, which, like regular Bitcoin Network software programs, turns the user’s computer into a “node” on the Bitcoin Network that validates blocks. Bitcoin transactions are recorded in new blocks that are added to the Bitcoin Blockchain and new bitcoins are provided as compensation issued to the miners for updating the Blockchain. Miners, through the use of the bitcoin software program, engage in a set of prescribed complex mathematical calculations in order to add a block to the Bitcoin Blockchain and thereby confirm bitcoin transactions included in that block’s data. Bitcoin is created and allocated by the Bitcoin Network protocol through a “mining” process subject to a strict, well-known issuance schedule.

Confirmed and validated bitcoin transactions are recorded in blocks added to the Bitcoin Blockchain. Each block contains the details of some or all of the most recent transactions that are not memorialized in prior blocks, as well as a record of the award of bitcoin to the miner who added the new block. Each unique block can only be solved and added to the Bitcoin Blockchain by one miner; therefore, all individual miners and mining pools on the Bitcoin Network are engaged in a competitive process of constantly increasing their computing power to improve their likelihood of solving for new blocks. As more miners join the Bitcoin Network and its processing power increases, the Bitcoin Network adjusts the complexity of the block-solving equation to maintain a predetermined pace of adding a new block to the Bitcoin Blockchain approximately every ten minutes.

The value of bitcoin is determined, in part, by the supply of and demand for bitcoin in the global exchange market for the trading of bitcoin, market expectations for the adoption of bitcoin by individuals, the number of merchants that accept bitcoin as a form of payment and the volume of private end-user-to-end-user transactions.

Overview of Index Methodology and Composition

The Index was developed to provide investors with a clear, rules-based, and transparent way to track the value of bitcoin. The Index is designed as an investable benchmark, suitable both for benchmarking active strategies and serving as the underlying index for an investment in bitcoin.

As described below, in valuing the price of bitcoin, the Index Provider will make use of bitcoin price transactions from a universe of cryptocurrency exchanges that it classifies as “Verified Exchanges.” The Index Provider at present tracks over 200 online cryptocurrency exchanges that offer trading on cryptocurrencies. From that list the Index Provider will eliminate a significant portion based on a number of factors, including eliminating exchanges that (1) are domiciled in emerging market countries and countries that have capital controls; (2) do not charge fees for trading, either explicitly or through “trade mining” activities where an exchange provides an off-setting rebate to the client for the trades; (3) lack functioning and stable Application Programming Interfaces (“API”) for the transmission of price and volume data; (4) issues [sic] with significant downtime, problems with customers withdrawal abilities, or known security issues; (5) are or may be subject to extraordinary legal or regulatory activity; and (6) do not account for at least 0.1% of the trailing 30-day Average Daily Volume among all exchanges that charge transaction fees. Those exchanges that remain after the Index Provider has eliminated exchanges are considered the “Verified Exchanges.”¹¹

In addition, on no less than a quarterly basis, the Index Committee will review the actual published trading data of each otherwise Verified Exchange. This includes bid/ask spreads and size, actual claimed executed trades with price and volume, and any other factors the Committee deems relevant. Exchanges that show persistent signs of artificial or inflated volume may be removed from the list of Verified Exchanges.

According to the Registration Statement, as a result of its screening process, the Index Provider’s list of Verified Exchanges will be derived by significantly reducing the universe of over 200 exchanges down to approximately 10. At present, the Index Provider believes that these Verified Exchanges account for a majority of the total global volume of bitcoin traded on exchanges, although both the number of Verified Exchanges and the percentage of global volume they represent is subject to change.

In addition to using prices and volume from Verified Exchanges to calculate the Index, the Committee will also include executed prices and volume from listed futures contracts on

¹¹ The list of Verified Exchanges used to price the Index will be available on the Index Provider’s website, www.bitwiseinvestments [sic].

any regulated futures exchange domiciled in a developed market country and on which bitcoin are traded as long as the futures contract settles to physical “coins” at the expiration of the contract(s). In the case of listed futures contracts that offer more than one planned expiration date, the futures contract that is closest to expiration, the “spot contract,” will be used.

The Index Provider believes that the use of a large number of pre-screened cryptocurrency exchanges, as well as listed futures that are physically settled, representing a majority of global bitcoin trading to provide price and volume inputs, provides certain benefits compared to using a limited number of exchanges for index pricing inputs. These benefits include minimizing the potential negative impacts of any single exchange going off-line due to technical problems, or financial, hacking, legal or regulatory issues. In addition, given the fungible nature of bitcoin, the Index Provider believes that the potential impact on Index values of individual exchanges experiencing outside attempts to manipulate either reported volume or reported prices is muted by the use of a large number of exchange price and volume inputs.

When calculating the value of the Index the Index Provider makes use of the actual trades executed on the various Verified Exchanges. Prices are weighted such that bitcoin prices from exchanges with a greater amount of the trading volume in the prior hour are weighted more heavily than bitcoin prices from exchanges with lesser amounts of volume.

The Index has provisions for handling isolated, or “one-off,” events in the cryptocurrency market generally, such as “hard forks.” A hard fork occurs if an alternative version of bitcoin is developed and the holders of the original version of bitcoin also end up owning a pro-rata share of the new version. As a general rule, the Index attributes the value of significant hard forks, if any, to the value of the Index at the time of the event. However, the Index would not continue to be calculated going forward as if those new holdings were an ongoing part of the Index. The Index Provider may from time to time adopt additional policies for the Index to address changes and

new developments in the bitcoin universe.

The Index Provider will publish the daily Index values each day at or shortly after 4:00 p.m. Eastern Time (“E.T.”). An indicative Index value will be published every 15 seconds during all business days, although this value is not the official Index value.

Net Asset Value

According to the Registration Statement, the Trust’s per Share Net Asset Value (“NAV”) will be calculated by dividing the value of the net assets of the Trust (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding. The Trust’s NAV will be calculated on each trading day on the Exchange. The Trust will compute its NAVs as of 4:00 p.m. E.T. The Trust’s NAV will be calculated only once each trading day. The Trust’s daily NAV may be found at, www.bitwiseinvestments.com [sic].

Indicative Fund Value

In order to provide updated information relating to the Trust for use by investors and market professionals, the Exchange will calculate an updated “Indicative Fund Value” (“IFV”). The IFV will be calculated by using the prior day’s closing net assets of the Trust as a base and updating throughout the Exchange’s Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. reflect changes in the most recently reported price level of the Index as reported by Bloomberg, L.P. or another reporting service.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.¹²

Creation and Redemption of Shares

According to the Registration Statement, the Trust intends to create and redeem Shares in one or more Creation Baskets or Redemption Baskets. A Creation Basket and a Redemption Basket are a block of 25,000 Shares of the Trust. Except when aggregated in Creation Units, the Shares are not redeemable securities.

¹² Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

Only Authorized Participants may purchase and redeem Creation Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) the Depository Trust Company (“DTC”) Participants. An Authorized Participant is an entity that has entered into an Authorized Participant Agreement with the Trust and the Sponsor.

Creation Procedures

On any business day, an Authorized Participant may place an order with the distributor to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a “business day” means any day other than a day when the Exchange or the New York Stock Exchange is closed for regular trading.

By placing a purchase order, an Authorized Participant agrees to deposit bitcoin, Treasuries, cash or a combination of bitcoin, Treasuries and cash with the Trust. Prior to the delivery of baskets for a purchase order, the Authorized Participant must also have wired to the custodian the nonrefundable transaction fee due for the purchase order. Authorized Participants may not withdraw a creation request. If an Authorized Participant fails to consummate the foregoing, the order shall be cancelled.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more baskets mirror the procedures for the creation of creation baskets. On any business day, an Authorized Participant may place an order with the Marketing Agent to redeem one or more baskets. A redemption order so received will be effective on the date it is received in satisfactory form by the Marketing Agent (“Redemption Order Date”). The redemption procedures allow Authorized Participants to redeem baskets and do not entitle an individual shareholder to redeem any shares in an amount less than a Redemption Basket, or to redeem baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the baskets to be redeemed through DTC's book-entry system to the Trust not later than noon E.T. on the second business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Sponsor's account at the custodian the non-refundable transaction fee due for the redemption order. An Authorized Participant may not withdraw a redemption order.

The manner by which redemptions are made is dictated by the terms of the Authorized Participant Agreement. If an Authorized Participant fails to consummate the foregoing, the order shall be cancelled.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant of an amount of bitcoin, Treasuries and/or cash that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to redeem is properly received as the number of shares to be redeemed under the redemption order is in proportion to the total number of shares outstanding on the date the order is received. The Sponsor, directly or in consultation with the Administrator, determines the requirements for bitcoin, Treasuries and cash, including the remaining maturities of the Treasuries and proportions of Treasuries and cash that may be included in distributions to redeem baskets. The Marketing Agent will publish an estimate of the redemption distribution per basket as of the beginning of each business day.

Availability of Information Regarding Bitcoin

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through online information services.

In addition, the Trust's website, www.bitwiseinvestments.com, will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each business day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also

include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

The spot price of bitcoin as reflected in the Index will also be available on a 24-hour basis from the Trust's website.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.¹³ Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs.¹⁴ If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m.

to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E [sic] requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁵ The

¹³ See NYSE Arca Rule 7.12-E.

¹⁴ A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

¹⁵ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory

Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).¹⁶

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin through ETP Holders acting as registered “Market Makers”, in connection with such ETP Holders’ proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust or the Index, (b) limitations on portfolio holdings, reference assets or the Index, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the

services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

¹⁶ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (7) trading information; and (8) NYSE Arca suitability rules.

The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also disclose the trading hours of the Shares that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust’s website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁷ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares or the underlying bitcoin through ETP Holders, in connection with such ETP Holders’ proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust’s website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares’ ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust’s website will include (1) daily trading volume, the prior business day’s reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust’s website will be publicly available prior to the public offering of Shares and accessible at no charge.

¹⁷ 15 U.S.C. 78f(b)(5).

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-01 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-2019-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-01, and should be submitted on or before March 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-02389 Filed 2-14-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85090; File No. PCAOB-2019-01]

Public Company Accounting Oversight Board; Notice of Filing of and Immediate Effectiveness of Proposed Bylaw and Rule Amendments To Provide That the Board's Appointment and Removal of Hearing Officers Are Subject to Commission Approval

February 11, 2019.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), 15 U.S.C. 7217(b), notice is hereby given that on January 29, 2019, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed amendments described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed amendments from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Amendments

On December 20, 2018, the Board adopted amendments to its bylaws and rules (collectively, the "proposed amendments") to provide that the PCAOB's appointment and removal of PCAOB hearing officers are subject to Commission approval and to make related clarifying and conforming changes to the PCAOB's rules. Specifically, the Board is amending Article VI of its bylaws and PCAOB Rules 1001(h)(i), 5200, and 5402. The proposed amendments are concerned

¹⁸ 17 CFR 200.30-3(a)(12).

solely with the administration of the PCAOB in that they relate to the employment relationship between the Board and its hearing officers, its interaction with the Commission in the Commission's performance of oversight of the PCAOB, and the clarification of the delegations of authority by the Board to PCAOB hearing officers.

The text of the proposed amendments appears in the Board's SEC Form 19b-4 filing and is available on the Board's website at <https://pcaobus.org/Rulemaking/Pages/Docket045> and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Amendments

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed amendments and stated that the amendments are concerned solely with the administration of the PCAOB. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Amendments

1. Purpose

The Board's duties under the Act include acting on registration applications of public accounting firms that prepare audit reports for issuers, brokers, or dealers,¹ and conducting disciplinary proceedings concerning, and imposing appropriate sanctions where justified upon, registered public accounting firms and their associated persons.² In carrying out these duties, the Board may direct that a PCAOB hearing officer preside over a disciplinary or other proceeding.³ The Board's authority to do so derives from Section 101(f)(4) of the Act, permitting the Board, subject to Commission oversight under Section 107 of the Act, "to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define

their duties, and fix their salaries or other compensation." Section 101(g)(2) of the Act further authorizes that "[t]he rules of the Board shall, subject to the approval of the Commission . . . permit, as the Board determines necessary and appropriate, delegation by the Board of any of its functions to an . . . employee of the Board, . . . including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter." In 2004, the Commission approved the Board's proposed rules relating to investigations and adjudications, authorizing creation of the PCAOB's hearing officer position.⁴

On June 21, 2018, the U.S. Supreme Court held in *Lucia v. SEC* that SEC Administrative Law Judges (ALJs) are inferior officers under the Appointments Clause of the U.S. Constitution and that accordingly SEC ALJs are required to be appointed by "the President, a court of law, or a head of department," such as the Commission.⁵ Since the *Lucia* decision, the Commission has taken various actions, including issuance of an order reiterating its November 30, 2017 approval of the prior appointments of its ALJs by its staff as the Commission's own under the Constitution.⁶ In light of the *Lucia* litigation, other federal government agencies have taken similar measures as to their ALJs or like officials, also out of an abundance of caution and for avoidance of doubt.⁷

The *Lucia* case did not involve a challenge to PCAOB hearing officers,

only to SEC ALJs. Nor has any court, the Commission, or the Board adjudicated whether a PCAOB hearing officer is, like an SEC ALJ, an inferior officer under the Appointments Clause.⁸ Indeed, there are a number of differences between the position of an SEC ALJ and the position of a PCAOB hearing officer.⁹

Nevertheless, out of an abundance of caution and to eliminate any uncertainty about the status of PCAOB hearing officers that might distract from the PCAOB's mission, including its important registration and disciplinary functions, the Board is adopting certain amendments to its bylaws and rules. These amendments modify the PCAOB's processes to appoint and remove its hearing officers to provide that such appointments and removals shall be subject to the approval of the Commission, a head of department under the Appointments Clause.

The amendments to Article VI of the Board's bylaws and PCAOB Rule 1001(h)(i), the language of which rule is changed to cross-reference the bylaw amendment, specify that the PCAOB's appointment and removal of any PCAOB hearing officer are subject to Commission approval. These changes are consistent with the Commission's broad authority to oversee the Board under Section 107 of the Act, *see* Sections 101(c) & (f) and 107 of the Act, 15 U.S.C. 7211(c) & (f), 7217, and the Commission's authority to "appoint . . . officers, attorneys, economists, examiners, and other employees" under Section 4(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78d(b).

As contemplated by these amendments, when the PCAOB's Governing Board, as defined by the bylaws,¹⁰ has reached a decision on the appointment or removal of any PCAOB hearing officer, that decision shall be

⁴ See *Order Approving Proposed Rules Relating to Investigations and Adjudications*, SEC Rel. No. 34-49704, 2004 WL 1439833 (May 14, 2004).

⁵ 138 S. Ct. 2044, 2050-51 (2018).

⁶ See *In re Pending Administrative Proceedings*, SEC Rel. No. 34-83907, 2018 WL 4003609, *1 (Aug. 22, 2018).

⁷ See, e.g., USITC, *The Appointment of the Commission's Administrative Law Judges for Section 337 Investigations*, 83 FR 45,678-01 (Sept. 10, 2018); FMSHRC, *Ratification Notice* (Apr. 3, 2018), available at www.fmshr.gov/about/news/commission-ratification-notice; FDIC, *Resolution of Board of Directors* (July 19, 2018), available at <https://www.fdic.gov/news/board/2018-07-19-085152.pdf>; CFTC, *Ratification and Reconsideration Order, In re Pending Administrative Proceedings*, 2018 WL 1966116 (Apr. 6, 2018); Letter from Sec'y R. Alexander Acosta, Dep't of Labor, to Hon. Paul R. Almazan, Admin. Law Judge, Dep't of Labor (Dec. 21, 2017), available at https://www.oalj.dol.gov/PUBLIC/FOIA/Frequently_Requested_Records/ALJ_Appointments/Secretaryst_Ratification_of_ALJ_Appointments_12_21_2017.pdf; FTC, *P130500 Federal Trade Commission Minute: Ratification of Appointment of Administrative Law Judge and Chief Administrative Law Judge* (Sept. 11, 2015), attached as Ex. A to FTC, *Order Denying Respondent LabMD, Inc.'s Motion to Dismiss, In re LabMD Inc.*, No. 9357 (Sept. 14, 2015), available at <https://www.ftc.gov/system/files/documents/cases/150914labmdmotion.pdf>.

⁸ An attempt was made to challenge the constitutionality of a PCAOB hearing officer's appointment in *Kabani v. SEC*, but the court held that the argument had not been timely raised and was forfeited. 733 F. App'x 918, 2018 WL 3828524, *1 (9th Cir. Aug. 13, 2018).

⁹ For example, an SEC ALJ may administer oaths and affirmations; issue, revoke, quash, or modify subpoenas; issue protective orders; and punish contemptuous conduct; a PCAOB hearing officer does not have that authority. Compare 17 CFR 200.14(a)(1) & (2), 200.111(b), 180(a), 232(e), 322 with PCAOB Rules 5103, 5105, 5200(b)(1), 5424.

¹⁰ See Articles IV and VI of the PCAOB's bylaws (stating that "[t]he Governing Board shall consist of those persons appointed thereto by the Securities and Exchange Commission, pursuant to Section 101 of the Act" and that "[t]he Chairman of the Governing Board . . . shall also be the President and Chief Executive Officer of the Corporation"). In *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 510 (2010), the Supreme Court held that PCAOB Governing Board members are inferior officers under the Appointments Clause.

¹ The PCAOB has oversight authority with respect to audits of brokers and dealers that are registered with the SEC. See Sections 110(3) and (4) of the Act, 15 U.S.C. 7220(3) and (4).

² See, e.g., Sections 101(c)(1) & (4), 102(c), 105(a) & (c)(1)-(3) of the Act, 15 U.S.C. 7211(c)(1) & (4), 7212(c), 7215(a) & (c)(1)-(3).

³ See, e.g., Sections 101(f)(4) and 101(g)(2) of the Act, 15 U.S.C. 7211(f)(4) & (g)(2); PCAOB Rules 5200 (Commencement of Disciplinary Proceedings), 5200 (Commencement of Hearing on Disapproval of a Registration Application).

submitted to the Commission for consideration. The proposed appointment or removal of a hearing officer by the PCAOB cannot be effectuated until Commission approval has been given. The Commission's approval of a PCAOB hearing officer's appointment will result in the hearing officer being appointed in the manner of an inferior officer for purposes of the Appointments Clause.¹¹

The Board is also adopting certain clarifying and conforming amendments to its adjudications rules in light of the rule changes discussed above. Specifically, the Board is adding a new subsection to Rule 5200 to summarize the framework within which the hearing officer functions under the Act and the Board's rules. That new subsection explains that all proceedings shall be presided over by the Board, which is the entity empowered to act on registration applications and to conduct disciplinary proceedings.¹² Alternatively, the Board may order that the proceedings be conducted in the first instance by a hearing officer to whom the Board has, under certain conditions, delegated adjudicatory responsibilities.¹³ The new subsection makes even more explicit the manner in which current PCAOB rules, such as Rules 5200(b)(10), 5201(d)(2), 5204(b), and 5445, situate the hearing officer within PCAOB adjudication processes.¹⁴

Additionally, the amendments make clarifying and conforming edits to the heading of current PCAOB Rule 5200(b) and to the heading and text of PCAOB Rule 5402(b). Specifically, the words "appointment" and "appoint" in these current rules are replaced with "assignment" and "assign," and current Rule 5200(b) is renumbered Rule 5200(c) and cross-referenced to new Rule 5200(b). These changes avoid any confusion between the actions of the Board and the Commission in appointing, and approving the appointment of, a hearing officer, and the PCAOB Secretary's ministerial act of

assigning a specific hearing officer to a specific proceeding pursuant to a Board order.

The above-described, targeted amendments seek to dispel any legal uncertainty arising from *Lucia* about the PCAOB hearing officer, who, as noted, may be tasked with presiding over a disciplinary or other proceeding. This will facilitate and make more efficient the Board's performance of its duties under the Act to take "[a]ction on [a]pplications" for the "regist[r]ation [of] public accounting firms that prepare audit reports for issuers, brokers, and dealers"; to "conduct . . . disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms"; and to "enforce compliance with th[e] Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof."¹⁵ These functions are part of the Board's responsibility "to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports."¹⁶

Moreover, additional benefits will flow from the amendments because the Appointments Clause serves an important public purpose. The Supreme Court has described the Clause's requirements as "among the significant structural safeguards of the constitutional scheme," "designed to preserve political accountability relative to important government assignments."¹⁷ The Board has chosen to remedy the uncertainty caused by *Lucia* by conforming the appointment and removal of its hearing officers to those requirements. Thus, the Appointments Clause's benefits and protections are explicitly extended to respondents in PCAOB proceedings, and to the public more broadly.

2. Statutory Basis

The statutory basis for the proposed amendments is Title I of the Act. Specifically, Section 101(f)(2) of the Act empowers the Board, subject to Commission oversight under Section 107 of the Act, "to conduct its

operations and maintain offices, and to exercise all other rights and powers authorized by this Act." Section 101(f)(4), as discussed, empowers the Board, subject to Commission oversight under Section 107 of the Act, to appoint personnel. Section 101(g)(1) directs the Board, "subject to the approval of the Commission . . . [to] provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under th[e] Act." And Section 101(g)(2), as discussed, permits the Board, "subject to the approval of the Commission," to delegate its hearing functions within the PCAOB. Furthermore, the amendments directly relate to statutory duties of the Board and purposes for its establishment that are discussed above.

B. Board's Statement on Burden on Competition

Not applicable. The proposed amendments are concerned solely with the administration of the PCAOB, as discussed in Item I above.

C. Board's Statement on Comments on the Proposed Amendments Received From Members, Participants or Others

Written comments were neither solicited nor received. The proposed amendments are concerned solely with the administration of the PCAOB, as discussed in Item I above.

III. Date of Effectiveness of the Proposed Amendments and Timing for Commission

The foregoing proposed amendments have become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934¹⁸ and paragraph (f)(3) of Rule 19b-4 thereunder.¹⁹ At any time within 60 days of the filing of the proposed amendments, the Commission summarily may temporarily suspend such amendments 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed amendments are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

¹¹ See *Free Enterprise Fund*, 561 U.S. at 512 n.13 (noting examples of precedents in which "[w]e have previously found that the department head's approval [of the appointment of personnel] satisfies the Appointments Clause").

¹² See, e.g., Sections 101(c)(1) & (4) of the Act, 15 U.S.C. 7211(c)(1) & (4) ("the Board shall . . . register public accounting firms . . . [and] conduct . . . disciplinary proceedings . . .") (emphasis added).

¹³ See Section 101(g)(2) of the Act, 15 U.S.C. 7211(g)(2) (permitting, under specified conditions, "delegation by the Board of any of its functions to an . . . employee of the Board . . . , including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter").

¹⁴ The provision is also analogous to SEC Rule of Practice 110, 17 CFR 201.110.

¹⁵ See, e.g., Sections 101(c)(1), (4) & (6), 102(c), 105(a) & (c)(1)–(3) of the Act, 15 U.S.C. 7211(c)(1), (4) & (6), 7212(c), 7215(a) & (c)(1)–(3).

¹⁶ See Section 101(a) of the Act, 15 U.S.C. 7211(a).

¹⁷ *Edmond v. United States*, 520 U.S. 651, 659, 663 (1997).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(3).

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
- Send an email to rule-comments@sec.gov. Please include PCAOB–2019–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to PCAOB–2019–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the proposed amendments 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. 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 PCAOB–2019–01 and should be submitted on or before March 8, 2019.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.²⁰

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019–02450 Filed 2–14–19; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No SSA–2019–0007]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency’s burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information

collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: OIRA_Submission@omb.eop.gov.
(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through www.regulations.gov, referencing Docket ID Number [SSA–2019–0007].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 16, 2019. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. When a beneficiary or claimant reports farm work from outside the United States, SSA documents this work on Form SSA–7163A–F4. Specifically, SSA uses the form to determine if we should apply foreign work deductions to the recipient’s Title II benefits. We collect the information either annually or every other year, depending on the respondent’s country of residence. Respondents are Social Security recipients engaged in farming activities outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7163A–F4	1,000	1	60	1,000

2. Information About Joint Checking/Savings Account—20 CFR 416.1201 and 416.1208—0960–0461. SSA considers a person’s resources when evaluating eligibility for Supplemental Security Income (SSI). Generally, we consider funds in checking and savings accounts as resources owned by the individuals whose names appear on the account. However, individuals applying for SSI may rebut this assumption of ownership in a joint account by submitting certain

evidence to establish the funds do not belong to them. SSA uses Form SSA–2574 to collect information from SSI applicants and recipients who object to the assumption that they own all or part of the funds in a joint checking or savings account bearing their names. SSA collects information about the account from both the SSI applicant or recipient and the other account holder(s). After receiving the completed form, SSA determines if we should

consider the account to be a resource for the SSI applicant and recipient. The respondents are applicants and recipients of SSI, and individuals who list themselves as joint owners of financial accounts with SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

²⁰ 17 CFR 200.30–11(b)(2).

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-2574 Paper version	50,000	1	7	5,833
Intranet version (SSI claims system)	150,000	1	7	17,500
Totals	200,000	.....	.....	23,333

3. *Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960-0472.* When SSA records show a wage earner is deceased, and we receive wage reports from an employer for the wage earner for a year

subsequent to the year of death, SSA mails the employer Form SSA-L4112 (Employer Verification of Earnings After Death). SSA uses the information Form SSA-L4112 provides to verify wage information previously received from

the employer is correct for the employee and the year in question. The respondents are employers who report wages for employees who died.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-L4112	54,998	1	10	9,166

4. *Certificate of Election for Reduced Widow(er)s and Surviving Divorced Spouse's Benefits—20 CFR 404.335—0960-0759.* Section 202(q) of the Act provides SSA the authority to reduce benefits under certain conditions when elected by a Title II beneficiary. However, reduced benefits are not payable to an already entitled spouse (or divorced spouse) who:

- Is at least age 62 and under full retirement age in the month of the number holder's death; and
 - Is receiving both reduced spouse's (or divorced spouse's) benefits and either retirement or disability benefits in the month before the month of the number holder's death.
- To elect reduced widow(er) benefits, a recipient completes Form SSA-4111.

SSA uses the information collected to pay a qualified dually entitled widow(er) (or surviving divorced spouse) who elects to receive a reduced widow(er) benefit. The respondents are qualified dually entitled widow(er)s (or surviving divorced spouse) who elect to receive a reduced widow(er) benefit.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-4111	30,000	1	2	1,000

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 18, 2019. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. *Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335-404.338, & 404.603-0960-0004.* Section 2029(e) and 202(f) of the Act set forth the requirements for entitlement to widow(er)'s benefits, including the requirements to file an application. For SSA to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA-10-BK to determine whether an applicant meets the statutory and

regulatory conditions for entitlement to widow(er)'s Title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone, and enter the information on the paper form or into the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-10-BK MCS version	518,784	1	14	121,050
SSA-10-BK Paper version	2,255	1	15	564
Totals	521,039	.....	.....	121,614

2. *Notice Regarding Substitution of Party Upon Death of Claimant—*

Reconsideration of Disability Cessation—20 CFR Sections 404.907-

404.921 and 416.1407-416.1421—0960-0351. When a claimant dies before we

make a determination on that person's request for reconsideration of a disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency uses Form

SSA-770 to collect information about whether to pursue or withdraw the reconsideration request. We use this information as the basis for the decision to continue or discontinue with the appeals process. Respondents are

substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-770	1,200	1	5	100

3. Appointment of Representative—20 CFR 404.1707, 404.1720, 408.1101, 416.1507, and 416.1520—0960-0527. Individuals claiming rights or benefits under the Social Security Act (Act) must notify SSA in writing when they appoint an individual to represent them in dealing with SSA. In addition, SSA requires representatives to sign the notice of appointment, or submit the equivalent in writing, if the representative is not an attorney. Recipients use Form SSA-1696-U4 to appoint a representative to handle their claim before SSA, and their appointed representative uses the SSA-1696-U4 to indicate whether they will charge a fee, and to show their eligibility for direct fee payment. In addition,

representatives also use the SSA-1696-U4 to inform SSA of their disbarment; suspension from a court or bar in which they previously admitted to practice; or their disqualification from participating in or appearing before a Federal program or agency. Finally, SSA requires non-attorney appointed representatives to sign the SSA-1696-U4, or an equivalent written statement. SSA uses the information on the SSA-1696-U4 to document the appointment of the representative. In addition, respondents use the SSA-1696-SUP2 to revoke their appointment of a representative, and representatives use the SSA-1696-SUP2 to withdraw their acceptance of the appointment. SSA uses this information to document the

revocation and withdrawal of a representative. Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI); SSI payments; or anyone pursuing a benefit or invoking a right under SSA programs, who are notifying SSA they have appointed a person to represent them in their dealings with SSA, and their non-attorney representatives who need to sign the form.

Note: We inadvertently published incorrect burden data both in our publication on 7/10/18 at 83 FR 31987, and again on 10/3/18 at 83 FR 49965. We are correcting for that oversight here.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-1696-U4	800,000	1	12	160,000
SSA-1696-SUP1	21,000	1	5	1,750
SSA-1696-SUP2	233,000	1	5	19,417
Totals	1,054,000	.....	.....	181,167

4. Centenarian and Medicare Non-Utilization Project Development Worksheets: Face-to-Face Interview and Telephone Interview—20 CFR 416.204(b) and 422.135—0960-0780. SSA conducts interviews with centenary Title II beneficiaries and Title XVI recipients, and Medicare Non-Utilization Project (MNUP) beneficiaries age 90 and older to: (1) Assess if the beneficiaries are still living; (2) prevent fraud through identity misrepresentation; and (3) evaluate the well-being of the recipients to determine if they need a representative payee, or

a change in representative payee. SSA field office personnel obtain the information through one-time, in-person interviews with the centenarians and MNUP beneficiaries. If the centenarians and MNUP beneficiaries have representatives or caregivers, SSA personnel invite them to the interviews. During these interviews, SSA employees make overall observations of the centenarians, MNUP beneficiaries, and their representative payees (if applicable). The interviewer uses the appropriate Development Worksheet as a guide for the interview, in addition to

documenting findings during the interview. Non-completion of the Worksheets, or refusal of the interviews, may result in the suspension of the centenarians' or MNUP beneficiaries' payments. SSA conducts the interviews either over the telephone or through a face-to-face discussion with the respondents. Respondents are Centenarian and MNUP beneficiaries; their representative payees; or their caregivers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Centenarian Project—Title XVI Only *	194	1	15	49
MNUP—All Title II Responses	4,413	1	15	1,103

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Totals	4,607	.....	.....	1,152

* Some cases are Title II and Title XVI rollovers from prior Centenarian workloads.

Dated: February 12, 2019.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2019-02469 Filed 2-14-19; 8:45 am]

BILLING CODE 4191-02-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36229]

**Union Pacific Railroad Company—
Trackage Rights Exemption—West
Memphis Base Railroad, L.L.C.**

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for exemption of overhead and local trackage rights over a rail line controlled by West Memphis Base Railroad, L.L.C. (WMBR) between milepost 355.539 and milepost 353.281 at West Memphis, Ark. (the Line), a total distance of approximately 2.25 miles.

UP states that the trackage rights agreement between it and WMBR will allow UP to continue serving customers on the Line in the same manner as before WMBR acquired rights over the Line. According to UP, following the sale of the Line by UP's predecessor, Missouri Pacific Railroad Company (Missouri Pacific) to the City of West Memphis, Ark., Missouri Pacific, and later UP, operated over the Line pursuant to an operating agreement between Missouri Pacific and the City of West Memphis.¹

The transaction may be consummated on or after March 1, 2019, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the 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 February 22, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36229, 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 Jeremy Berman, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

Board decisions and notices are available at www.stb.gov.

Decided: February 12, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2019-02556 Filed 2-14-19; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36264]

**R.J. Corman Railroad Company/
Western Ohio Line—Renewal of Lease
Exemption With Interchange
Commitment—Norfolk Southern
Railway Company**

R.J. Corman Railroad Company/Western Ohio Line (RJCW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to renew its lease of a rail line owned by Norfolk Southern Railway Company (NSR), located in the State of Ohio (the Line). The Line, known as the St. Mary's Line, extends from milepost SP 120.0 at St. Mary's, Auglaize County, to milepost SP 136.3 near the Ohio-Indiana border, Mercer County, a total distance of 16.3 miles.

RJCW and NSR previously executed a lease agreement regarding the Line in 1993.¹ RJCW states that the new lease agreement, dated November 12, 2018, has an initial ten-year term that may be

extended by mutual agreement of the parties.

RJCW certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed \$5 million. As required under 49 CFR 1150.43(h)(1), RJCW has disclosed in its verified notice that its new lease agreement with NSR contains an interchange commitment that charges RJCW an interchange charge for carloads that originate or terminate on the Line that are not interchanged to NSR.² RJCW has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

RJCW states in its verified notice that it intends to consummate the proposed lease renewal on or shortly after March 2, 2019, the effective date of this exemption.

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 February 22, 2019.

An original and 10 copies of all pleadings, referring to Docket No. FD 36264, 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 RJCW's representative, Catherine S. Wright, Irvin Rigsby PLC, 110 N Main Street, Nicholasville, KY 40356.

According to RJCW, 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 at www.stb.gov.

Decided: February 11, 2019.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019-02384 Filed 2-14-19; 8:45 am]

BILLING CODE 4915-01-P

¹ See *City of W. Memphis, Ark.—Acquis. & Operation Exemption—Mo. Pac. R.R.*, FD 32121 (ICC served July 31, 1992); see also *W. Memphis Base R.R.—Lease, Operation, & Future Purchase Exemption—City of W. Memphis, Ark.*, FD 36215 (STB served Sept. 13, 2018).

¹ *R.J. Corman R.R./W. Ohio Line—Acquis. & Operation Exemption—Certain Lines of Norfolk & W. Ry.*, FD 32294 (ICC served Aug. 20, 1993).

² RJCW filed under seal a copy of the new lease agreement with its verified notice of exemption. See 49 CFR 1150.43(h)(1).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 193 (Sub-No. 3X)]

**Canton Railroad Company—
Abandonment Exemption—in
Baltimore City, MD**

On January 29, 2019, Canton Railroad Company (Canton Railroad) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 1,200 linear feet (0.23 miles) of rail line located in Baltimore City, MD. (the Line).¹ Canton Railroad states that the Line has no milepost or station designations and is sometimes referred to as the OverFlo Track. The Line traverses U.S. Postal Service ZIP Code 21224.

According to Canton Railroad, the last freight service on the Line occurred on December 12, 2017, and shortly thereafter, the only shipper on the Line sold its property to 601 Haven Street LLC (Haven), which does not desire rail service. Canton Railroad states that, following abandonment, it plans to sell the right-of-way to Haven. In a letter appended as Exhibit B to the petition, Haven states that it fully supports the proposed abandonment, which will facilitate its purchase of the right-of-way for non-rail use.

Canton Railroad states that, based on the information in its possession, the Line does not contain federally granted rights-of-way, and any documentation in Canton Railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 17, 2019.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption.² Each OFA must

¹ Canton Railroad filed a supplement to its petition for exemption on February 7, 2019.

² The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors in all abandonment and discontinuance proceedings to file a formal expression of intent to file an offer. The process also requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information.

be accompanied by a \$1,800 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 7, 2019. Each trail request must be accompanied by a \$300 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 193 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001; and (2) Rose-Michele Nardi, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037. Replies to the petition are due on or before March 7, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at 202-245-0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at 202-245-0305. Assistance for the hearing impaired is available through the Federal Relay Service (FRS) at 1-800-877-8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at www.stb.gov.

Decided: February 11, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2019-02361 Filed 2-14-19; 8:45 am]

BILLING CODE 4915-01-P

See *Offers of Financial Assistance*, EP 729 (STB served June 29, 2017); 82 FR 30997 (July 5, 2017).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36265]

**San Francisco Bay Railroad, Inc.—
Lease and Operation Exemption—San
Francisco Port Commission**

San Francisco Bay Railroad, Inc. (SFBR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 for the extension of its lease and operation of trackage of the San Francisco Port Commission (the Port) from a connection with the Union Pacific Railroad Company (UP) near the intersection of Amador Street and Cargo Way through the Intermodal Container Transfer Facility and to Piers 92, 94, and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, Cal. (the Lines). SFBR states that the Lines do not have mileposts.¹

SFBR states that, pursuant to agreements between it and the Port, SFBR will extend its lease and license to operate over the Lines until December 31, 2033, with a mutual extension option to December 31, 2038. SFBR verifies that its lease with the Port does not involve a limitation on SFBR's interchange with a third-party connecting carrier and that UP is the only such connecting carrier.

SFBR certifies that its projected annual revenues will not result in the creation of a Class I or II rail carrier and that the projected annual rail revenue of SFBR does not exceed \$5 million.

The transaction may be consummated on or after March 2, 2019, the effective date of the exemption (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 for stay must be filed no later than February 22, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36265, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas J Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, Ill. 60606-3208.

¹ SFBR, under a different name at the time, obtained authority to operate over the Lines in 2001 related to a previous lease agreement. *LB Railco, Inc.—Lease & Operation Exemption—S.F. Port Comm'n*, FD 33985 (STB served Jan. 8, 2001).

According to SFBR, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: February 12, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2019-02555 Filed 2-14-19; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

Notice of Opportunity for Public Comment on Non-Rule Making Action To Change Land Use From Aeronautical to Non-Aeronautical at Mobile Downtown Airport, Mobile, Alabama

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: Notice is being given that the FAA is considering a request from the Mobile Airport Authority to waive the requirement for one (1) parcel of surplus property totaling 0.88 acres, located on Mobile Downtown Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before *March 18, 2019*.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, Attn: Kevin Morgan, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208-2307.

In addition, one (1) copy of any comments submitted to the FAA must be mailed or delivered to Chris Curry, Executive Director, Mobile Airport Authority at the following address: P.O. Box 88004, Mobile, AL 36608-0004.

FOR FURTHER INFORMATION CONTACT: Kevin Morgan, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9891. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Mobile Airport Authority to waive the requirement for one (1) parcel of surplus property totaling 0.88 acres, located on

Mobile Downtown Airport, be used for aeronautical purposes.

The FAA is reviewing a request for an update to the Mobile Downtown Airport Layout Plan submitted by the Mobile Airport Authority. The Airport Layout Plan update, if approved, would change the land use on 0.88 acres from aeronautical to non-aeronautical. The property will then be leased for commercial development. The proceeds from the lease of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Mobile Downtown Airport (BFM).

Issued in Jackson, Mississippi, on February 4, 2019.

Rans D. Black,

Manager, Jackson Airports District Office,
Southern Region.

[FR Doc. 2019-02372 Filed 2-14-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0090]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the Automobile Carriers Conference of the American Trucking Associations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the Automobile Carriers Conference (ACC) of the American Truck Associations (ATA) for a limited 5-year exemption to relieve motor carriers operating stinger steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new motor vehicles. The Federal Motor Carrier Safety Regulations (FMCSR) require any commercial motor vehicle (CMV) transporting a load which extends more than 4 feet beyond the rear of the vehicle be marked with a single red or orange fluorescent warning flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags if the projecting

load is wider than 2 feet, located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle. The Agency has determined that the lack of warning flags on stinger steered automobile transporter equipment when transporting motor vehicles would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective February 15, 2019 and ending February 15, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or

class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

ACC's Application for Exemption

The ACC applied for an exemption from 49 CFR 393.87 requesting that motor carriers operating "stinger steered" automobile transporter equipment be relieved from the requirement to place warning flags on projecting loads of new motor vehicles. Stinger steered vehicles are those with the fifth wheel hitch located on a drop frame behind and below the rear-most axle of the power unit. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.87 of the FMCSRs requires any CMV transporting a load which extends beyond the sides by more than 4 inches, or more than 4 feet beyond the rear, to have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 18 inches square. There must be a single flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags are required if the projecting load is wider than 2 feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.

In its application, the ACC states "With the enactment of the FAST [Fixing America's Surface Transportation] Act in December 2015, stinger steered automobile transporter equipment are permitted a rear vehicular overhang allowance of not less than six feet. [49 U.S.C. 31111(b)(1)(G)] Prior to the enactment of the FAST Act, the minimum rear overhang allowance for all automobile transporters was a minimum of four feet. [23 CFR Sec. 658.13(e)(ii)]

The ACC states:

The transportation of new motor vehicles poses a dilemma in adhering to the flag requirements. Affixing flags or anything else to the surfaces of the vehicles is not allowed by vehicle manufacturers as it can lead to scratches and other damage to the vehicle. Auto transporters have attempted to adhere to the intent of the regulations by affixing flags at the end of the trailers (see attachments). This in itself can still lead to vehicle damage by virtue of the flag rubbing on the vehicle surface. However, this attempt to comply with the regulatory intent does not adhere to the letter of the regulations and has resulted in carriers receiving numerous

citations for being in violation of the flag requirements.

The ACC states that motor vehicles are the only commodity to be transported that must adhere to the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, reflective devices and associated equipment," and that FMCSA No. 108 has required motor vehicles to be equipped with side-facing reflex reflectors in addition to amber reflectors in the front of the vehicle and red reflectors in the rear of the vehicle since 1968. The ACC contends that the reflective devices that are required to be on the vehicles being transported, along with the required lighting and conspicuity treatments on the trailer "more than adequately adhere to the intent of Sec. 383.87 in notifying the motoring public that a load extends more than four feet beyond the rear of the trailer." In addition, ACC states that FMVSS No. 108 imposes specific performance criteria for the required reflectors, whereas there are no such performance requirements for the flags required by the FMCSRs.

The ACC states that the automobile transporter vehicle population is a fraction of the overall CMV population, consisting of approximately 16,000 units, and that the stinger steered vehicle population is a subset of that. Further, ACC notes that since the enactment of the FAST Act, the industry has not experienced an increase in collisions into the rear end of trucks with the additional 2 feet of allowable overhang. The ACC states that "Statistics show that the accident frequency of collisions into the rear end of auto transporters is miniscule with a rate of less than 0.05%."

The exemption would apply to all motor carriers operating stinger steered automobile transporter equipment. The ACC believes that the reflex reflectors that are required to be installed on the new motor vehicles being transported, in conjunction with the various marking and conspicuity requirements required on the trailer transporting the new vehicles, provide a level of safety that is greater than that achieved by the warning flags required by the FMCSRs.

Comments

FMCSA published a notice of the application in the **Federal Register** on February 27, 2018, and asked for public comment (83 FR 8569). The Agency received four comments: Rick Earl from United Road; Brian Suhre from Cassens Transport Company; Kirk Welch from Toyota Logistics Services, Inc.; and Shaun Kildare and Peter Kurdock from

Advocates for Highway and Auto Safety (Advocates).

Mr. Earl, Mr. Suhre, and Mr. Welch each provided comments supporting the ACC application. Mr. Earl stated that the reflex reflectors on the passenger vehicles being transported provide significantly higher visibility than the flags required by section 393.87 of the FMCSRs, and that the "flags can damage the valuable passenger vehicles we carry, causing significant waste and discord with our customers and their customers." In addition, Mr. Earl stated:

The rule itself is sound and makes sense, but in the specific case of auto hauling it becomes burdensome and does not add to the safety of the motoring public. It further adds confusion from an enforcement perspective. Our car haulers often find themselves cited by local law enforcement, have been forced to turn on lights on the cars we carry before being allowed to leave the scale or other such measures employed by the states in an effort to comply with this unnecessary rule.

Mr. Suhre stated that "the vehicles we transport, by their very nature, meet Federal conspicuity requirements in both daytime and nighttime," and also noted that "vehicle manufacturers prohibit us from attaching any items to the vehicles during transport." Like Mr. Earl, Mr. Suhre noted that drivers "have even been required to climb up on the trailer to turn on the headlights and/or taillights of a cargo unit before being allowed to leave an inspection site." Mr. Welch stated:

The flag requirements on loads extending beyond four feet from the rear of a trailer makes perfect sense when that load consists of a telephone pole, a ladder, or some other object, in order to alert the motoring public to its existence. . . . As ACC stated in its petition request, the current flag placing requirement is impractical when dealing with motor vehicles. Attaching flags on the vehicle at the rear of the transporter and to the side of the vehicle being transported will ultimately result in unacceptable damage to the finish of the new vehicle.

Mr. Welch, like Mr. Earl, noted that attaching flags on the vehicle at the rear of the transporter and to the side of the vehicle being transported will result in vehicle damage. In addition, Mr. Welch stated:

The fact that our vehicles must meet NHTSA lighting standards, including those for reflex reflectors, in addition to the lighting and conspicuity of the trailers is more than enough to alert the motoring public that a load extension exists. As the petition request states, NHTSA requirements are quantifiable standards whereby no such reflective standards exist for flags, as required by the FMCSA. This ultimately results in providing for a safer highway environment for the traveling public.

Advocates opposed the ACC application because it believes (1) that the requirement for warning flags in the FMCSRs and the requirement for reflex reflectors in the FMVSSs are intended to address two distinct areas of public safety, (2) increasing the overhang length for stinger steered automobile transporters significantly heightens the need for proper warnings to the public of these new longer loads, and (3) there has not been enough time to determine the real world on-road effects of the new overhang standard. Specifically with respect to its concerns about the adequacy of reflex reflectors to provide warning of an overhanging load, Advocates stated:

The reflectors required by FMVSS 108 are intended to ensure that passenger motor vehicles operated by the public can be identified by other road users. They are not designed not would the public be expected to understand that the reflectors (required since 1968 for this sole purpose) are also intended to indicate that a CMV is carrying an unusually wide or overhanging load off and well above the surface of the roadway. Compliance with a FMVSS by an automobile manufacturer is in no way a substitute for a motor carrier complying with an FMCSR. These two sets of separate regulations are intended to address two distinct areas of public safety. In addition, there is no data presented in the Application that shows that reflectors installed on a passenger motor vehicle provide the intended effect of warning flags placed on a CMV carrying overhanging freight.

While acknowledging that the FAST Act extended the rear overhang length for stinger steered automobile transporters, Advocates notes that “Section 5520 of the FAST Act did not include, and Congress did not intend, to permit an exemption from the warning flag requirement of the FMCSRs.” Further, Advocates expressed concern that carriers transporting automobiles have not developed any practical alternatives to comply with the regulation, such as flags that do not damage the surface of an automobile, instead of seeking an exemption from a critical safety regulation.

FMCSA Decision

The FMCSA has evaluated the ACC exemption application, and the comments received. The Agency believes that granting the temporary exemption to relieve motor carriers operating stinger steered automobile transporters from the requirement to place warning flags on projecting loads of new motor vehicles will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. Section 393.87(b) of the FMCSRs requires loads

that extend more than 4 feet beyond the rear of a vehicle be marked with warning flags “to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.” [Emphasis added.] The FMCSRs require a single flag if the projecting load is 2 feet wide or less, and two flags if the projecting load is wider than 2 feet. The flags are critical when the extending load may not be easily identifiable to the motoring public (*i.e.*, logs, building materials), and/or when the load may not extend across the entire width of the vehicle being used to transport the item(s).

However, the Agency believes that the transport of automobiles that are permitted, by statute, to extend up to 6 feet beyond the rearmost portion of a stinger steered auto transporter is a unique situation as compared to the transportation of other items because automobiles extend across virtually the entire width of the stinger steered auto transporter, and are easily identifiable as automobiles to the motoring public. This is especially true if the rearmost automobile being transported faces the front of the auto transporter, as the rear of the automobile is required to be equipped with two reflex reflectors,¹ located as far apart as practicable, that meet the photometric requirements specified in FMVSS No. 108. To the contrary, section 387 of the FMCSRs requires extending loads to be marked with “red or orange fluorescent warning flags,” but does not impose any specific photometric requirements for these flags, *i.e.*, required level of visibility from a certain distance, etc. While FMVSS No. 108 does not require the front of automobiles to be equipped with reflex reflectors, FMCSA believes that even if the rearmost automobile being transported is facing the rear of the auto transporter, oncoming motorists will easily identify the extending load as an automobile that extends across the full width of the auto transporter.

FMCSA acknowledges Advocates’ comment that the longer, 6-foot overhang has only been permitted for a relatively short period of time, and as such, it is difficult to determine what—if any—impact the new standard has had on safety. Nonetheless, the FAST Act expressly permits stinger steered automobile transporters to carry loads that overhang the rear by 6 feet. Regarding Advocates’ concern that there has not been enough time to determine

¹ Reflex reflector is defined in section 393.5 of the FMCSRs as “A device which is used on a vehicle to give an indication to an approaching driver by reflected light from the lamps on the approaching vehicle.”

the “additional threat to public safety that would result from removing warning flags from these longer loads,” the Agency is required to make a determination that it is likely that an equivalent or greater level of safety will be maintained prior to granting any temporary exemption. As discussed above, FMCSA believes that the transport of automobiles via stinger steered auto transporters is a unique situation as compared to the transportation of other items because automobiles extend across virtually the entire width of the stinger steered auto transporter, and are easily identifiable as automobiles to the motoring public. Further, the automobile transporter vehicle population is a very small fraction of the overall commercial vehicle population, consisting of approximately 16,000 units, with the stinger steered vehicle population a subset of those 16,000 vehicles. The very limited exposure of these stinger steered auto transporters, coupled with the fact that the automobiles they are hauling are easily identifiable by oncoming motorists leads FMCSA to believe that granting the temporary exemption is likely to provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning February 15, 2019 and ending February 15, 2024. During the temporary exemption period, motor carriers operating stinger steered automobile transporter equipment will not have to place warning flags on projecting loads of motor vehicles that extend up to 6 feet from the rear of the automobile transporter.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating stinger steered automobile transporter equipment with projecting loads of motor vehicles up to 6 feet from the rear of the automobile transporter are not achieving the requisite statutory level of

safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: December 13, 2019.

Raymond P. Martinez,
Administrator.

[FR Doc. 2019-02378 Filed 2-14-19; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2018-0155]

Privacy Act of 1974; Department of Transportation, Office of the Secretary of Transportation; DOT/ALL-17; Freedom of Information and Privacy Act Case Files

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of Privacy Act modified system of records and rescission of system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation proposes to update and reissue a current Department of Transportation system of records titled, "Department of Transportation—DOT/ALL 017 Freedom of Information Act (FOIA) and Privacy Act Case Files System of Records." The Department also intends to consolidate the following legacy system, "DOT/MARAD 003 Freedom of Information and Privacy Request Records" as part of the same and rescind DOT/MARAD 003.

This system of records will allow the Department of Transportation, to include its Operating Administrations, the Office of the Inspector General, and Secretarial Offices, to collect and retain records and related correspondence on individuals who have filed requests for information under the Freedom of

Information Act and Privacy Act of 1974, including requests for review of final denials of such requests. As a result of a biennial review of this system, records have been updated within the following sections; Security Classification to include classified and sensitive records, Categories of Individuals to include individuals making requests on behalf of the subject individual and individuals whose requests have been referred to the Department for processing by other agencies as well as individuals involved in processing and responding to requests and/or appeals, Categories of Records to provide greater clarity of the type of records and information included in the system, Purposes to include responding to litigation associated with requests, and other activities required to assist the Department in executing its responsibilities, Routine Uses to include three new routine uses to support processing of FOIA and Privacy Act requests, appeals and amendments, and to facilitate understanding of DOT processes, Retrievability to expand the set of identifiers that may be used to retrieve cases, System Manager to provide information on where to find operating administration specific contacts, and Exemptions Claimed to clarify that records requested from other systems are not part of this system of records. Additionally, this notice includes non-substantive changes to simplify the language, formatting, and text of the previously published notice to align with the requirements of Office of Memorandum and Budget Memoranda A-108. This updated system, titled Freedom of Information Act and Privacy Act Case Files, will be included in the Department of Transportation's inventory of record systems.

DATES: Written comments should be submitted on or before March 18, 2019. The Department may publish an amended Systems of Records Notice in light of any comments received. This new system will be applicable March 18, 2019.

ADDRESSES: You may submit comments, identified by docket number DOT-OST-2018-0155 by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2018-0155. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, Department of Transportation, Washington, DC 20590; privacy@dot.gov; or 202.527.3284.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Office of the Secretary (OST) proposes to update and reissue a current DOT wide system of records titled, "Department of Transportation/ALL-017 Freedom of Information Act and Privacy Act Case Files." The Department also intends to rescind the following legacy system, "DOT/MARAD 003 Freedom of Information and Privacy Request Records" and consolidate records managed under that Notice as part of the same.

The updated system of records consists of information created and used by the Department's Freedom of Information Act (FOIA) and Privacy Act (PA) staff to process requests as well as to manage the FOIA and PA programs.

The publication of this updated system of records notice supports DOT efforts to ensure that all DOT Operating Administrations, Secretarial Offices, and the Office of the Inspector General implement their Privacy Act obligations

and processes for collecting and handling FOIA and PA records in a consistent manner.

Changes to the notices Categories of Records, Categories of Individuals, Purposes, and Retrievability improve the transparency of, but do not reflect substantive changes to, the Notice. The Security Classification section has been modified to be comprehensive inclusive of all the types of records that may be integrated into a case file in terms of records collected that may be responsive to a FOIA and/or PA request. The FOIA and PA case files themselves remain unclassified. The Department is proposing three new Routine Uses to bolster Department transparency and efficiency of its FOIA and Privacy Act programs. The first proposed Routine Use supports efforts to promote appropriate application of access and appeals rights under the Privacy Act. The Department is also proposing a Routine Use to allow disclosure of "FOIA logs" (including requester names, case number) to the public to facilitate understanding of DOT FOIA processes. The Department is proposing an additional Routine Use, which would permit the sharing of initial requestor letters to submitters of responsive records to solicit input about the application of FOIA exemptions, like FOIA Exemption 4, to requested records submitted to the Department. The Department also intends to include a Routine Use to permit the Department to share information with the Office of Government Information Services (OGIS) for the purpose of resolving disputes between requesters seeking information under the Freedom of Information Act (FOIA) and DOT, or OGIS' review of DOT's policies, procedures, and compliance with FOIA. OGIS was created to resolve disputes related to FOIA processing, and FOIA requesters contact OGIS for assistance with FOIA matters. Therefore, sharing records from this system with OGIS for these purposes is compatible with the purpose of collection.

This Notice also includes several of DOT's General Routine Uses, to the extent they are compatible with the purposes of this System. As recognized by the Office of Management and Budget (OMB) in its Privacy Act Implementation Guidance and Responsibilities (65 FR 19746, July 9, 1975), the routine uses include all proper and necessary uses of information in the system, even if such uses occur infrequently. The DOT has included in this SORN routine uses for disclosures to law enforcement when the record, on its face, indicates a violation of law, to DOJ for litigation

purposes, or when necessary in with investigating or responding to a breach of this system or other agencies' systems. DOT must take appropriate action to address any apparent violations of the law, and to share information with legal counsel in the Department of Justice when necessary for litigation. The OMB has long recognized that these types of routine uses are "proper and necessary" uses of information and qualify as compatible with agency systems. 65 FR 19476. In addition, by OMB Memorandum M-17-12, OMB directed agencies to include routine uses that will permit sharing of information when needed to investigate, respond to, and mitigate a breach of a Federal information system. The Department also has included routine uses that permit sharing with the National Archives and Records Administration when necessary for an inspection, to any Federal government agency engaged in audit or oversight related to this system, or when DOT determines that the disclosure will detect, prevent, or mitigate terrorism activity. These types of disclosures are necessary and proper uses of information in this system because they further DOT's obligation to fulfil its records management and program management responsibilities by facilitating accountability to agencies charged with oversight in these areas, and the Department's obligation under Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-456, and Executive Order 13388 (Oct. 25, 2005) to share information necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States. Finally, this system includes a routine use to permit sharing with our contractors, consultants, experts, grantees, and others when necessary to fulfill a DOT function related to this System. Agencies routinely engage assistance of these types of individuals in the fulfillment of their duties, such as contract support necessary to maintain the database in which these records are housed. DOT relies on contract support to maintain this system, and disclosures for this purpose is compatible with the purpose of the collection—to maintain a system that tracks consumer complaints.

The System Manager and Address information have been updated to reflect the current location of DOT records. DOT no longer claims any exemptions for this system, however, records responsive to FOIA and Privacy Act requests that are part of this System

of Records would be subject to any exemptions identified in the originating System of Records Notice.

This updated system will be included in DOT's inventory of record systems.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A "System of Records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.*, to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A "System of Records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.*, to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER

Department of Transportation (DOT)/ ALL-14, Freedom of Information and Privacy Act Case Files.

SECURITY CLASSIFICATION:

Unclassified, classified, controlled unclassified.

SYSTEM LOCATION:

Records are maintained at the Department of Transportation and in component offices of the Department of Transportation in both Washington, DC and field offices.

SYSTEM MANAGER AND ADDRESS:

For requests for records for Offices of the Secretary, Departmental Freedom of Information Act Officer, Department of Transportation, 1200 New Jersey Avenue SE, Room W94-122, Washington, DC 20590. For all other Operating Administrations see www.transportation.gov/foia under "DOT FOIA Service Centers and Liaisons."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended; 5 U.S.C. 552a, the Privacy Act of 1974, as amended.

PURPOSE(S):

The purpose of this system is to process individuals' record requests and administrative appeals under the Freedom of Information Act (FOIA) and requests for access to or amendment of records under the Privacy Act (PA). Records may also be used to support DOT participation in litigation arising from such requests and appeals, and in assisting DOT in carrying out any other responsibilities under the Freedom of Information Act or Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit FOIA and/or PA requests and administrative appeals to DOT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system relate to records received, created, and compiled in processing FOIA and PA requests, including:

- Records and related correspondence to/from individuals who have filed requests for information under provisions of the FOIA and/or PA, including initial requests and requests for review of initial denials of such requests;
- Correspondence with individuals or entities that submitted requested records;

- Documents relevant to appeals and lawsuits under FOIA and PA including from Department of Justice and other government litigators.

RECORD SOURCE CATEGORIES:

Records are obtained directly from those individuals who submit initial requests and administrative appeals pursuant to FOIA and PA, and DOT personnel who handle such requests and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses

1. To another Federal agency (a) with an interest in the record in connection with a referral of a FOIA request to that agency for its views or decisions on disclosure or (b) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence that may be useful to DOT in making required determinations under the FOIA.
2. To a Federal, State, territorial, tribal, local, international, or foreign agency or entity for the purpose of consulting with that agency or entity;
 - a. To assist in making a determination regarding access to or amendment of information, or
 - b. For the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of records maintained in other DOT Privacy Act system of records.
3. To members of the public to facilitate understanding of DOT FOIA processes. Such release will be limited to "FOIA logs" and may include the request number, date of receipt, name of individual or organization making the request, a description of the information sought, response date, and the type of response.
4. To submitters of records for purposes of determining the applicability of FOIA exemptions, such as Exemption 4, to the records. Such release will be limited to initial request letters.
5. To the Office of Government Information Services (OGIS) for the purpose of resolving disputes between requesters seeking information under the Freedom of Information Act (FOIA)

and DOT, or OGIS' review of DOT's policies, procedures, and compliance with FOIA.

Department General Routine Uses

6. To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing, investigating, prosecuting, or enforcing a statute, regulation, rule or order, when a record in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, including any records from this system relevant to the implementation, investigation, prosecution, or enforcement of the statute, regulation, rule, or order that was or may have been violated;

7. To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for DOT to obtain information relevant to a DOT decision concerning the hiring or retention or an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit;

8. To a Federal agency, upon its request, in connection with the requesting Federal agency's hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation or an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information requested is relevant and necessary to the requesting agency's decision on the matter;

9. To the Department of Justice, or any other Federal agency conducting litigation, when (a) DOT, (b) any DOT employee, in his/her official capacity, or in his/her individual capacity if the Department of Justice has agreed to represent the employee, or (c) the United States or any agency thereof, is a party to litigation or has an interest in litigation, and DOT determines that the use of the records by the Department of Justice or other Federal agency conducting the litigation is relevant and necessary to the litigation; provided, however, that DOT determines, in each case, that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

10. To parties in proceedings before any court or adjudicative or administrative body before which DOT appears when (a) DOT, (b) any DOT employee in his or her official capacity, or in his or her individual capacity

where DOT has agreed to represent the employee, or (c) the United States or any agency thereof is a party to litigation or has an interest in the proceeding, and DOT determined that is relevant and necessary to the proceeding; provided, however, that DOT determines, in each case, that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

11. To the National Archives and Records Administration for an inspection under 44 U.S.C. 2904 and 2906.

12. To another agency or instrumentality of any government jurisdiction for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims; however, this routine use only permits the disclosure of names pursuant to a computer matching program that otherwise complies with the requirements of the Privacy Act.

13. To the Attorney General of the United States, of his/her designee, information indicating that a person meets any of the qualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. Should the validity of the information DOT provides to the Attorney General or his/her designee be disputed, DOT may disclose to that National Background Information Check System, established by the Brady Handgun Violence Prevention Act, any information from this system necessary to resolve the dispute.

14. To appropriate agencies, entities, and persons, when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

15. To DOT's contractors and their agents, DOT's experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

16. To an agency, organization, or individual for the purpose of performing an audit or oversight related to this system or records, provided that DOT determines the records are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

17. To a Federal, State, local, tribal, foreign government, or multinational agency, either in response to a request or upon DOT's initiative, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or law enforcement information (Guideline 2, report attached to White House Memorandum, "Information Sharing Environment," Nov. 22, 2006), when DOT finds that disclosure of the record is necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-456, and Executive Order 13388 (Oct. 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically and/or on paper in secure facilities. Electronic records may be stored on magnetic disc, tape, digital media, and CD-ROM.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the name of the individual who made the request/appeal, the name of the authorized representative making a request/appeal on behalf of the individual, the case tracking or control number assigned to the request or appeal, or chronologically by date of initial determination.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and disposed in accordance with the National Archives and Records Administration (NARA) General Records Schedule (GRS) 4.2, Items 020 and 090, Information Access and Protection Records. Under Item 020, FOIA and PA requests for access to records are destroyed six years after final agency action or three years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use. Under Item 090, PA amendment request files are destroyed with the records for which amendment was requested, or four years after the close of the case, whichever is

later. Longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Appropriate controls have been imposed to minimize the risk of compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may submit a request in writing to the Departmental FOIA Office whose contact information is listed under the System manager for this notice. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Departmental Freedom of Information Act Office, U.S. Department of Transportation, Room W94-122, 1200 New Jersey Ave. SE, Washington, DC 20590, ATTN: FOIA request.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Freedom of Information Act Officer, <http://www.transportation.gov/foia> or 202.366.4542. In addition you should provide the following:

An explanation of why you believe the Department would have information on you;

- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the procedures described in "Record Access Procedures" above.

NOTIFICATION PROCEDURES:

Individuals seeking notification of whether this system contains records about him or her may contact the System Manager following the procedures described in the "Record Access Procedures" above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemptions are claimed for the records associated with the administrative processing of FOIA and PA requests and appeals. During the course of a FOIA or PA action, copies of exempt materials from other systems of records may become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into the FOIA/PA case file, the same exemptions apply for those records, as are claimed for the original systems of records which they are a part.

HISTORY:

71 FR 35320 (June 19, 2006).

Issued in Washington, DC, on February 11, 2019.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2019-02356 Filed 2-14-19; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Foreign Sanctions Evaders List based on OFAC's determination that one or more applicable legal criteria were satisfied. U.S. persons are generally prohibited from engaging in transactions or dealings with such persons.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel. 202-622-4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202-622-2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Foreign Sanctions Evaders List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treas.gov/ofac).

Notice of OFAC Actions

On February 7, 2019, OFAC determined that all transactions or dealings, whether direct or indirect, involving the following person, including any exporting, reexporting, importing, selling, purchasing, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to (i) any goods, services, or technology in or intended for the United States, or (ii) any goods, services, or technology provided by or to United States persons, wherever located, are prohibited under the relevant sanctions authority listed below.

Individual

1. KAYAKIRAN, Evren, Turkey; DOB 08 Feb 1980; citizen Turkey; Gender Male; Passport U00242309 (Turkey) (individual) [FSE-IR].

Sanctioned pursuant to section 1(a)(i) of Executive Order 13608 of May 1, 2012, "Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria," for causing six violations of Section 4 of Executive Order 13628, as continued in effect by Sections 8 and 20(a) of Executive Order 13846, as well as a prohibition contained in Section 560.215 of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, thereby violating an Executive order relating to the national emergency declared in Executive Order 12957 of March 15, 1995 or any regulation issued pursuant to the foregoing, as modified in scope in subsequent Executive orders.

Dated: February 7, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019-02363 Filed 2-14-19; 8:45 am]

BILLING CODE 4810-AL-P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China." Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 28, 2019 on "Risks, Rewards, and Results: U.S. Companies in China and Chinese Companies in the United States."

DATES: The hearing is scheduled for Thursday, February 28, 2019 at 9:30 a.m.

ADDRESSES: TBD, Washington, DC. A detailed agenda for the hearing will be posted on the Commission's website at www.uscc.gov. Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Leslie Tisdale Reagan, 444 North Capitol Street NW, Suite 602, Washington DC 20001; telephone: 202-624-1496, or via email at lreagan@uscc.gov. *Reservations are not required to attend the hearing.*

SUPPLEMENTARY INFORMATION:

Background: This is the second public hearing the Commission will hold during its 2019 report cycle. This hearing seeks to evaluate two sets of relationships. In the first panel, hearing witnesses will review Chinese companies' participation in the U.S. economy, and in the second panel, hearing witnesses will review U.S. companies' participation in the Chinese economy. Both panels will assess implications of this participation for U.S. businesses, workers, consumers, and investors. The hearing will be co-chaired by Vice Chairman Robin

Cleveland and Commissioner Michael Wessel. Any interested party may file a written statement by February 28, 2019, by mailing to the contact above. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005), as amended by Public Law 113-291 (December 19, 2014).

Dated: February 12, 2019.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2019-02553 Filed 2-14-19; 8:45 am]

BILLING CODE 1137-00-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0009]

Agency Information Collection Activity: Application for Vocational Rehabilitation for Veterans With Service-Connected Disabilities

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 16, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0009" in any correspondence. During the comment

period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421-1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: (Application for Vocational Rehabilitation for Veterans with Service-connected Disabilities (Chapter 31, Title 38 U.S.C.) (VA Form 28-1900)).

OMB Control Number: 2900-0009.

Type of Review: Reinstatement With Change to a Previously Approved Collection.

Abstract: VA Form 28-1900 is completed by Veterans with a combined service-connected disability rating of 10 percent or more and Servicemembers awaiting discharge for such disability to apply for vocational rehabilitation benefits. VA provides services and assistance to Veterans with service-connected disabilities, who are determined entitled to such benefits, to obtain and maintain suitable employment. Vocational rehabilitation also provides service to support veterans with service-connected disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 21,419 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 128,515.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019-02562 Filed 2-14-19; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Special Medical Advisory Group will meet on March 29, 2019 at the Ralph H. Johnson VA Medical Center, 109 Bee Street, Charleston, South Carolina, from 9:15 a.m. to 3:30 p.m. EST. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on VHA transformation into a high reliability organization, commitment to zero harm, implementation of whole-health care, measuring quality in our Community Care Program and reducing clinical variation.

There will not be a public comment period, however, members of the public may submit written statements for review by the Committee to: Department of Veterans Affairs, SMAG—Office of Under Secretary for Health (10), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420 or by email at VASMAGDFO@va.gov. Comments will be accepted until close of business on March 27, 2019

Any member of the public wishing to attend the meeting or seeking additional information should email VASMAGDFO@va.gov or call 202-461-7005.

Dated: February 12, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019-02547 Filed 2-14-19; 8:45 am]

BILLING CODE 8320-01-P

**DEPARTMENT OF VETERANS
AFFAIRS**

[OMB Control No. 2900-0009]

**Agency information Collection
Activity: Application for Vocational
Rehabilitation for Veterans With
Service-Connected Disabilities****AGENCY:** Veterans Benefits
Administration, Department of Veterans
Affairs.**ACTION:** Notice to Withdraw.**SUMMARY:** On Feb 02, 2019, the
Department of Veterans Affairs (VA)
erroneously posted a 60-day **Federal
Register** Notice Agency Information

Collection Activity: (Application for
Vocational Rehabilitation for Veterans
with Service-Connected Disabilities
(Chapter 31, Title 38 U.S.C.) (VA Form
28-1900)) Document Number: 2019-
01687; OMB control number: 2900-0009
This FRN public comment period
should have been listed as 60 days and
not 30 days as published.

FOR FURTHER INFORMATION CONTACT:
Danny S. Green, Enterprise Records
Service (005R1B), Department of
Veterans Affairs, 810 Vermont Avenue
NW, Washington, DC 20420, at 202-
421-1354.

Correction

VA wishes to inform the public that
it is withdrawing FRN Document
Number: 2019-01687, 84 FR 2949. This
was a 30-day public comment FR Notice
published in error. The correct 60-day
FR Notice for public comment will be
published simultaneously with this
notification.

Dated: February 11, 2019.

By direction of the Secretary.

Danny S. Green,

*Interim VA Clearance Officer, Office of
Quality, Performance and Risk (QPR),
Department of Veterans Affairs.*

[FR Doc. 2019-02560 Filed 2-14-19; 8:45 am]

BILLING CODE 8320-01-P



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Part II

Securities and Exchange Commission

17 CFR Part 240

Risk Mitigation Techniques for Uncleared Security-Based Swaps; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-84861; File No. S7-28-18]

RIN 3235-AL83

Risk Mitigation Techniques for Uncleared Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“SEC” or “Commission”) is proposing rules that would require the application of specific risk mitigation techniques to portfolios of security-based swaps not submitted for clearing. In particular, the proposal would establish requirements for each registered security-based swap dealer (“SBS dealer”) and each registered major security-based swap participant (“major SBS participant”) (each SBS dealer and each major SBS participant hereafter referred to as an “SBS Entity” and together referred to as “SBS Entities”) with respect to, among other things, reconciling outstanding security-based swaps with applicable security-based counterparties on a periodic basis, engaging in certain forms of portfolio compression exercises, as appropriate, and executing written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap transaction. In addition, the Commission is proposing an interpretation to address the application of the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements to cross-border security-based swap activities and is proposing to amend Rule 3a71-6 to address the potential availability of substituted compliance in connection with those requirements. Moreover, the proposed rules would make corresponding changes to the recordkeeping, reporting, and notification requirements applicable to SBS Entities. Finally, the Commission is requesting comment on how certain aspects of the proposed rules address how a security-based swap data repository (“SDR”) could potentially satisfy its obligation to verify the terms of each security-based swap with both counterparties to the transaction.

DATES: Comments should be received on or before April 16, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-28-18 on the subject line; or

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-28-18. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml>). Comments are also 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. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, or Andrew Bernstein, Senior Special Counsel, at (202) 551-5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8010.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment the following new rules:

Commission reference	CFR citation (17 CFR)
Securities Exchange Act of 1934 (“Exchange Act”): ¹	
Rule 15Fi-3	§ 240.15Fi-3.
Rule 15Fi-4	§ 240.15Fi-4.

Commission reference	CFR citation (17 CFR)
Rule 15Fi-5	§ 240.15Fi-5.

The Commission also is proposing for comment amendments to:

Commission reference	CFR citation (17 CFR)
Exchange Act:	
Rule 3a71-6	§ 240.3a71-6.
Rule 15Fi-1	§ 240.15Fi-1.
Rule 17a-3 ²	§ 240.17a-3.
Rule 17a-4	§ 240.17a-4.
Rule 18a-5 (proposed)	§ 240.18a-5 (proposed).
Rule 18a-6 (proposed)	§ 240.18a-6 (proposed).

Finally, the Commission is requesting comment under:

Commission reference	CFR or U.S.C. citation
Exchange Act:	
Section 13(n)(5)(B)	15 U.S.C. 78m(n)(5).
Rule 13n-4(b)(3)	17 CFR 240.13n-4(b)(3).

Table of Contents

- I. Proposed Rules and Rule Amendments
 - A. Background
 - B. Rule 15Fi-3 (Portfolio Reconciliation)
 - 1. Overview of Portfolio Reconciliation
 - 2. Scope of the Portfolio Reconciliation Requirements
 - 3. Proposed Rule 15Fi-3(a): Portfolio Reconciliation With Other SBS Entities
 - 4. Proposed Rule 15Fi-3(a): Resolution of Discrepancies With Other SBS Entities
 - 5. Proposed Rule 15Fi-3(b): Portfolio Reconciliation With Other Counterparties
 - 6. Reporting of Valuation Disputes
 - 7. Application of Proposed Rule 15Fi-3 to Cleared Security-Based Swaps
 - 8. Comments Requested
 - C. Rule 15Fi-4 (Portfolio Compression)
 - 1. Overview of Portfolio Compression
 - 2. Scope of Proposed Rule 15Fi-4—Portfolio Compression Exercises
 - 3. Scope of Proposed Rule 15Fi-4—Bilateral Offset
 - 4. Application of Proposed Rule 15Fi-4 to Cleared Security-Based Swaps
 - 5. Comments Requested
 - D. Rule 15Fi-5 (Trading Relationship Documentation)
 - 1. Overview of Trading Relationship Documentation
 - 2. Scope of Proposed Rule 15Fi-5
 - 3. Proposed Rule 15Fi-5(b)(4): Documenting Valuation Methodologies

¹ 15 U.S.C. 78a *et seq.*

² In April 2014, the Commission proposed new Rules 18a-5 and 18a-6, and amendments to existing Rules 17a-3 and 17a-4. *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014) (“SBS Books and Records Proposing Release”). Although those proposed rules and rule amendments have not yet been adopted by the Commission, all of the relevant proposals included in this release are based on the proposed regulatory text contained in the SBS Books and Records Proposing Release.

4. Proposed Rule 15Fi-5(b)(5) and (6): Other Disclosure Requirements
5. Proposed Rule 15Fi-5(c): Audit of Security-Based Swap Trading Relationship Documentation
6. Exceptions to the Trading Relationship Documentation Requirements
7. Comments Requested
- E. Verification of Transaction Data by SDRs
 1. Reconciliation of Terms Submitted to an SDR
 2. Documentation of Regulatory Reporting Obligations
 3. Comments Requested
- F. Recordkeeping Requirements
 1. Proposed Amendments to Recordkeeping Rules
 2. Comments Requested
- II. Cross-Border Application of Rules 15Fi-3 Through 15Fi-5
 - A. Background on the Cross-Border Application of Title VII Requirements
 - B. Proposed Cross-Border Interpretation
 - C. Comments Requested
- III. Availability of Substituted Compliance for Rules 15Fi-3 Through 15Fi-5
 - A. Existing Substituted Compliance Rule
 - B. Proposed Amendment to Rule 3a71-6
 1. Basis for Substituted Compliance in Connection With the Portfolio Reconciliation, Portfolio Compression, and Trading Relationship Documentation Requirements
 2. Comparability Criteria, and Consideration of Related Requirements
 3. Comments Requested
- IV. General Request or Comment
- V. Paperwork Reduction Act
 - A. Summary of Collections of Information
 1. Proposed Rule 15Fi-3: Portfolio Reconciliation
 2. Proposed Rule 15Fi-4: Portfolio Compression
 3. Proposed Rule 15Fi-5: Written Trading Relationship Documentation
 4. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements
 5. Proposed Amendment to Rule 3a71-6: Substituted Compliance
 - B. Proposed Use of Information
 1. Proposed Rule 15Fi-3: Portfolio Reconciliation
 2. Proposed Rule 15Fi-4: Portfolio Compression
 3. Proposed Rule 15Fi-5: Written Trading Relationship Documentation
 4. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements
 5. Proposed Amendment to Rule 3a71-6: Substituted Compliance
 - C. Respondents
 - D. Total Annual Recordkeeping Burden
 1. Portfolio Reconciliation Activities Generally
 2. Establishing, Maintaining, and Enforcing Written Policies and Procedures
 3. Reporting of Certain Valuation Disputes
 4. Proposed Rule 15Fi-4: Portfolio Compression
 5. Proposed Rule 15Fi-5: Written Trading Relationship Documentation
 6. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements
7. Proposed Amendment to Rule 3a71-6: Substituted Compliance
 - E. Collection of Information Is Mandatory
 - F. Confidentiality
 - G. Request for Comment
- VI. Economic Analysis
 - A. Broad Economic Considerations
 - B. Economic Baseline
 1. Security-Based Swap Market Activity and Participants
 - a. Available Data From the Security-Based Swap Market
 - b. Affected SBS Entities
 - c. Other Market Participants
 - d. Outstanding Positions
 2. Current Portfolio Reconciliation Practices
 3. Current Portfolio Compression Practices
 4. Current Trading Relationship Documentation Practices
 - C. Economic Costs and Benefits, Including Impact on Efficiency, Competition, and Capital Formation
 1. Effects on Efficiency, Competition, and Capital Formation
 - a. Broad Market Effects
 - b. Substituted Compliance
 2. Portfolio Reconciliation
 - a. Requirements
 - b. Benefits
 - c. Costs
 - d. Alternatives
 3. Portfolio Compression
 - a. Requirements
 - b. Benefits
 - c. Costs
 - d. Alternatives
 4. Trading Relationship Documentation
 - a. Requirements
 - b. Benefits
 - c. Costs
 - d. Alternatives
 5. Recordkeeping Requirements
 - a. Requirements
 - b. Benefits
 - c. Costs
 - d. Alternatives
 6. Cross-Border Application of Rules 15Fi-3 Through 15Fi-5.
 - a. Requirements
 - b. Benefits
 - c. Costs
 - D. Request for Comment
- VII. Consideration of Impact on the Economy
- VIII. Regulatory Flexibility Act Certification
- IX. Statutory Basis and Text of Proposed Rules

I. Proposed Rules and Rule Amendments

A. Background

Section 15F(i)(1) of the Exchange Act, as added by Section 764(a) of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),³ requires each SBS Entity to conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing,

³ Public Law 111-203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to “Title VII” in this release are to Subtitle B of Title VII of the Dodd-Frank Act.

netting, documentation, and valuation of all security-based swaps.⁴ Section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBS Entities.⁵

The Commission previously adopted rules requiring SBS Entities to provide trade acknowledgments and to verify those trade acknowledgments with their counterparties to security-based swap transactions,⁶ but has not proposed rules concerning portfolio reconciliation, portfolio compression, or trading relationship documentation. By contrast, the Commodity Futures Trading Commission (“CFTC”) has implemented rules setting forth standards for the timely and accurate confirmation of swaps, addressing the reconciliation and compression of swap portfolios, and setting forth requirements for documenting the swap trading relationship between swap dealers or major swap participants (each swap dealer and each major swap participant hereafter referred to as a “Swap Entity” and together referred to as “Swap Entities”) and their counterparties.⁷

⁴ 15 U.S.C. 78o-10(i)(1).

⁵ 15 U.S.C. 78o-10(i)(2).

⁶ See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807 (June 17, 2016) (“Trade Acknowledgment and Verification Adopting Release”).

⁷ See Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) (“CFTC Risk Mitigation Adopting Release”). The European Commission (“EC”) has implemented similar measures. See Commission Delegated Regulation (EU) No. 149/2013 (Dec. 18, 2012) supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for over-the-counter (“OTC”) derivatives contracts not cleared by a central counterparty (Feb. 23, 2013), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:en:PDF>. Regulatory authorities in other jurisdictions (e.g., the Hong Kong Monetary Authority and the Monetary Authority of Singapore) have also proposed requirements similar to those adopted by the CFTC and the EC. In addition, the Canadian Securities Administrators (“CSA”) published a consultation paper in 2016 proposing a requirement that financial institutions enter into a written agreement documenting the material terms and conditions of any non-centrally cleared derivative, including standards related to the maintenance, review, and contents of that documentation. See CSA Consultation Paper 95-401—Margin and Collateral Requirements for Non-Centrally Cleared Derivatives (Jul. 7, 2016), available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20160707_95-401_collateral-requirements-cleared-derivatives.pdf.

Accordingly, the Commission is today proposing requirements applicable to SBS Entities addressing, among other things, reconciling and compressing portfolios of uncleared security-based swaps and executing written trading relationship documentation with each counterparty prior to or contemporaneously with executing an uncleared security-based swap. In developing this proposal, we have consulted and coordinated with the CFTC, the prudential regulators,⁸ and foreign regulatory authorities in accordance with the consultation mandate of the Dodd-Frank Act.⁹ We also have consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives.¹⁰ Through these multilateral and bilateral discussions and the Commission staff's participation in various international task forces and

⁸ For purposes of this statement, the term "prudential regulator" is defined in Section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference into Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to that definition, the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation ("FDIC"), the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the "prudential regulators") is the "prudential regulator" of an SBS Entity if the entity is directly supervised by that regulator. Separately, we are proposing a definition of "prudential regulator," to be used for purposes of the proposed portfolio reconciliation and trading relationship documentation requirements. See *infra* note 48. That proposed definition also references Section 3(a)(74) of the Exchange Act and includes the same list of agencies as noted above.

⁹ Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall "consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible."

In addition, Section 752(a) of the Dodd-Frank Act provides, in part, that "[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps."

¹⁰ Staff participates in a number of international standard-setting bodies and workstreams working on OTC derivatives reforms. For example, Commission staff participated in the International Organization of Securities Commissions' ("IOSCO") preparation of a report regarding risk mitigation standards for non-centrally cleared OTC derivatives. See Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives (Jan. 28, 2015), available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD469.pdf>. IOSCO developed those standards in consultation with the Basel Committee on Banking Supervision and the Committee on Payments and Market Infrastructures.

working groups, we have gathered information about foreign regulatory reform efforts and their effect on, and relationship with, the U.S. regulatory regime. The Commission has taken, and will continue to take, these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

Finally, the Commission recognizes that the CFTC rules pertaining to portfolio reconciliation, portfolio compression, and written trading relationship documentation have been in effect since 2012, and that any SBS Entity that also is registered with the CFTC as a Swap Entity will already have incurred systems and compliance costs in connection with the corresponding CFTC requirements. In order to minimize compliance burdens on such potential dual registrants in connection with the rules we are proposing today, we have attempted to harmonize this proposal with the existing CFTC rules wherever possible. There are, however, a limited number of provisions where we preliminarily believe it is appropriate to diverge from a particular aspect of the CFTC rules. Each of those differences is described below, along with the preliminary reasons for the different approaches. To the extent that no such substantive difference is described, it is because we have preliminarily determined that none exists. However, below we welcome and solicit comment on any potential substantive differences between the proposed rules and the corresponding CFTC rules, as well as on the decision to harmonize with the CFTC, both as an overall approach and with respect to any specific provisions of the proposed rules.

B. Rule 15Fi-3 (Portfolio Reconciliation)

1. Overview of Portfolio Reconciliation

In the Trade Acknowledgement and Verification Adopting Release, the Commission noted the importance of confirming trades in a timely manner, explaining that the process of confirming the terms of a transaction is essential for SBS Entities "to effectively measure and manage market and credit risk."¹¹ The Commission further explained that "a backlog of unconfirmed trades could hinder the settlement process, particularly if errors go undetected or a counterparty disputes the terms of a transaction."¹² Such disruptions in the settlement process could, in turn, lead to broader

¹¹ Trade Acknowledgement and Verification Adopting release, 81 FR at 39833.

¹² *Id.*

market instability in the case of a credit event involving a reference entity on which many different counterparties have, in the aggregate, a large notional outstanding exposure.¹³

In this regard, portfolio reconciliation addresses many of these same issues, but unlike the confirmation process, which occurs at the outset of a transaction, reconciliation operates throughout the life of the transaction. If a security-based swap transaction is accurately confirmed by both parties during the trade acknowledgement and verification process, reconciliation helps to identify any discrepancies in terms that do not remain constant throughout the life of a trade. Furthermore, if a discrepancy is *not* identified during the trade acknowledgement and verification process, it could be identified during a subsequent reconciliation exercise.

The Commission preliminarily believes that portfolio reconciliation serves as an important mechanism for promoting risk mitigation by requiring security-based swap counterparties to have established processes for identifying and resolving discrepancies involving key terms of their transactions. To illustrate this point, if a term necessary for calculating the market value of a security-based swap is not properly confirmed during the trade acknowledgment and verification process, such as due to some form of systems or human error, that discrepancy could lead to complications at various points throughout the life of the transaction, which could become particularly problematic if it remains undetected until such time as the parties are required to perform on their obligations.¹⁴ Thus, portfolio reconciliation could help to mitigate the possibility of a discrepancy unexpectedly affecting performance under the security-based swap transaction by increasing the likelihood

¹³ *Id.*

¹⁴ See Summary of OTC Commitments, Attachment to the July 31, 2008 letter from the Operations Management Group to Timothy Geithner, President, Federal Reserve Bank of New York ("FRBNY"), available at: <https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2008/CommitmentSummaryTable.pdf> ("Positive affirmation of trade economics is a key risk mitigation technique for OTC derivatives because it assures that each counterparty's risk management system accurately reflect the economic details of trades that have not yet been matched."). Although this particular commitment was made in the context of the trade affirmation process, we believe that the same basic principle supports the need to reconcile terms throughout the life of a trade, even if a term is accurately reflected in a firm's system as a result of the affirmation process. This is particularly true for terms that do not remain constant during the life of a trade.

that the parties are and remain in agreement with respect to all material terms.

This practice is particularly relevant with respect to terms used to perform a valuation of the financial instrument. Specifically, unresolved discrepancies regarding the value of a security-based swap can lead to, among other things, difficulties in the application of any processes that depend on the valuation being accurate, such as determining the amount of margin that must be posted or collected during the life of a security-based swap transaction. In the aggregate, such errors and other complications could result in significant uncollateralized exposure in the uncleared security-based swap markets (or alternatively, potentially inefficient overcollateralization).

In addition, valuation discrepancies identified during reconciliation could help to identify problems with one or both of the counterparties' internal valuation systems and models, or possibly even with a firm's internal controls. For example, in a report analyzing federal assistance to American International Group, Inc. ("AIG") following the events of September 2008, the General Accountability Office ("GAO") noted that in structuring this relief one of the many open issues the FRBNY had to address was the number of collateral disputes AIG had with its counterparties.¹⁵ GAO further explained that "[t]o the extent that lower valuations (more CDO value lost) produced greater collateral postings, counterparties had an interest in seeking lower valuations. Similarly, to the extent that higher valuations (less CDO value lost) meant smaller collateral postings, AIG had an interest in seeking higher valuations."¹⁶

In light of this information, the Commission preliminarily believes that the use of portfolio reconciliation to help maintain an agreed-upon valuation of a security-based swap throughout the lifecycle of a transaction should be a hallmark of prudent risk mitigation practices within the operations of an SBS Entity. Accordingly, the Commission is proposing new Rule

15Fi-3 under the Exchange Act,¹⁷ which generally would require those entities, in connection with security-based swaps not submitted for clearing, to (1) engage in portfolio reconciliation with counterparties who are SBS Entities and (2) establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation with counterparties who are not SBS Entities. In both cases, the frequency of the portfolio reconciliation would be based on the number of outstanding transactions with the applicable counterparty.

2. Scope of the Portfolio Reconciliation Requirements

For purposes of proposed Rule 15Fi-3,¹⁸ the Commission is proposing to amend existing Rule 15Fi-1 to add a definition of "portfolio reconciliation."¹⁹ As proposed, this term would be defined to mean any process by which the counterparties to one or more uncleared security-based swaps:

(i) Exchange the material terms of all security-based swaps in the security-based swap portfolio between the counterparties;

(ii) Exchange each counterparty's valuation of each security-based swap in the security-based swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(iii) Resolve any discrepancy in valuations or material terms.

For purposes of this proposed definition, the Commission also is proposing to amend Rule 15Fi-1 to add the terms "security-based swap portfolio," which would be defined to mean all security-based swaps currently in effect between a particular SBS Entity and a particular counterparty,²⁰ and "valuation," which would be defined to mean the current market value or net present value of a security-based swap.²¹ Both of these definitions help to establish the scope of the portfolio

reconciliation requirements in proposed Rule 15Fi-3, with the former defining which security-based swaps are subject to the rule and the latter defining one of the two categories of information that must be exchanged during a reconciliation (the other being "material terms"). Moreover, for consistency with the corresponding CFTC rules applicable to Swap Entities, these definitions are substantively identical to the CFTC's corresponding definitions, which we preliminarily believe are appropriately scoped and clear for purposes of proposed Rule 15Fi-3.

With respect to the phrase "material terms," the proposed definition would follow a similar approach to the one taken by the CFTC in that it would base the definition on the terms required to be reported to an SDR pursuant to Regulation SBSR.²² Unlike the approach taken by the CFTC, however, which has adopted a single definition of "material terms," the definition in proposed Rule 15Fi-1(i) would be bifurcated depending on whether a security-based swap transaction had already been included in a security-based swap portfolio and reconciled pursuant to proposed Rule 15Fi-3.²³ With respect to any security-based swap that has *not* yet been reconciled as part of a security-based swap portfolio, "material terms" would be defined to mean each term that is required to be reported to a registered SDR pursuant to Rule 901 under the Exchange Act.²⁴ With respect to all other security-based swaps within a security-based swap portfolio, the definition of "material terms" would continue to be based on the reporting requirements in Rule 901, but would exclude any term that is not relevant to the ongoing rights and obligations of the

²² 17 CFR 242.900 to 242.909.

²³ CFTC Rule 23.500(g) defines "material terms" to include the minimum primary economic terms (as defined in Appendix 1 of part 45 of the CFTC's regulations) of a swap, other than the 24 specific data fields identified in that rule. See 17 CFR 23.500(g). Among the excluded fields are: (1) The status of either counterparty as a swap dealer, major swap participant, financial entity, or U.S. person; (2) an indication that the swap will be allocated and certain information regarding the agent and the original swap; (3) an indication that the swap is a multi-asset swap and a further indication of its primary and secondary asset class; (4) an indication that the swap is a mixed swap and the identification of any non-CFTC registered swap data repository to which it is also reported (if applicable); (5) the block trade indicator, execution timestamp, and timestamp for submission to a swap data repository; (6) the clearing indicator and clearing venue; and (7) certain information regarding the application of the end user exception from mandatory clearing.

²⁴ See proposed Rule 15Fi-1(i)(1) (referencing 17 CFR 242.901).

¹⁵ See GAO, Financial Crisis: Review of Federal Reserve System Financial Assistance to American International Group, Inc., GAO-11-616 (Sept. 2011), available at <http://www.gao.gov/assets/590/585560.pdf> ("According to information we reviewed, on a [collateralized debt obligation ("CDO")] portfolio of \$71 billion . . . , AIG and its counterparties had valuation differences totaling \$4.3 billion. Among a group of 15 counterparties, 9 had valued their assets differently than AIG.")

¹⁶ *Id.* at 82.

¹⁷ Unless otherwise noted, all references to rules (both proposed and existing) without an accompanying statutory reference are to rules adopted (or proposed to be adopted) under the Exchange Act.

¹⁸ The corresponding CFTC rule is 17 CFR 23.502. The structure of the CFTC rule, including the subsections, mirrors the structure of proposed Rule 15Fi-3.

¹⁹ See proposed Rule 15Fi-1(l). The corresponding CFTC definition is in 17 CFR 23.500(i).

²⁰ See proposed Rule 15Fi-1(o). The corresponding CFTC definition is in 17 CFR 23.500(k).

²¹ See proposed Rule 15Fi-1(q). The corresponding CFTC definition is in 17 CFR 23.500(m).

parties and the valuation of the security-based swap.²⁵

The Commission preliminarily believes that the data set submitted to an SDR under Rule 901 is an appropriate measure for determining which terms should be reconciled pursuant to proposed Rule 15Fi-3. As noted above, the Commission believes that one of the fundamental goals of the portfolio reconciliation process is to help ensure that both counterparties to a security-based swap are in agreement on all of the terms necessary for developing a comprehensive understanding of each of their rights and obligations under the security-based swap, and that they remain in such agreement throughout the life of the transaction. To effect that objective, we are proposing that the term “portfolio reconciliation” be defined in part as the exchange of the “material terms” of all security-based swaps in the security-based swap portfolio between the counterparties. Similarly, in adopting Regulation SBSR the Commission explained that the Title VII regulatory reporting requirement “is designed to allow the Commission and other relevant authorities to have access to comprehensive information about security-based swap activity in registered SDRs.”²⁶ The Commission therefore preliminarily believes that the terms that must be reported to an SDR under Regulation SBSR are a good proxy for identifying the “material terms” that should be subject to the portfolio reconciliation requirements.

The Commission also preliminarily believes that basing the definition of “material terms” on what is required to be reported to an SDR provides certainty for SBS Entities regarding what information must be reconciled, which should in turn reduce the burdens on those entities without lessening the benefits of the proposed rule (which are described earlier in this section and in the Economic Analysis section below). Furthermore, the proposed approach is designed to allow affected counterparties to leverage the same systems used for SDR reporting for purposes of the portfolio reconciliation requirements, should such synergies exist. Moreover, this proposed approach would promote the same policy goals that underpin a particular requirement imposed on SDRs to verify the terms of each security-based swap with both

counterparties to the transaction, as discussed in detail in Section I.E below.

The Commission preliminarily believes that the proposed rule is reasonably tailored to avoid unnecessary burdens while still promoting important risk mitigation goals inherent to the portfolio reconciliation process. That said, certain terms of a security-based swap transaction may be material the first time that a transaction is reconciled, but might not be material during a subsequent reconciliation. This could be true, for example, with respect to any term of a transaction that does not affect any ongoing rights or obligations of the parties and that has no effect on the valuation of the security-based swap. Accordingly, the definition of “material terms” in proposed Rule 15Fi-1(i)(2) provides that with respect to any subsequent reconciliations, SBS Entities may exclude any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap, regardless of the fact that the term was required to be reported to an SDR under Regulation SBSR.²⁷ For example, the Commission preliminarily believes that the 24 terms excluded from the CFTC definition could be excluded from the proposed definition of “material terms” in the context of security-based swaps that have previously been reconciled.²⁸

Finally, the Commission recognizes that our proposed definition of “material terms” would differ from the corresponding CFTC definition in that Swap Entities would never need to reconcile the 24 terms excluded from the definition of “material terms” in

²⁷ The Commission does not, however, believe that a term would be appropriately excluded from the definition of “material terms” if it was resubmitted to an SDR because of an error in how it was initially reported or due to a lifecycle event. In those circumstances, the Commission preliminarily believes that such term would continue to be material for the same reasons that every term subject to a reporting requirement under Rule 901 would be material the first time that a transaction is reconciled. Once the updated term is reconciled, however, an SBS Entity would be able to exclude that term from subsequent reconciliations to the extent that it determines that it is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

²⁸ See *supra* note 23 (discussing CFTC Rule 23.500(g)). We further recognize that when the CFTC adopted amendments to Rule 23.500(g) to exclude these terms, it noted that “removal of these terms from reconciliations would alleviate the burden of resolving discrepancies in terms of a swap that are not relevant to the ongoing rights and obligations of the parties and the valuation of the swap without impairing the [CFTC’s] regulatory mission.” See Definitions of “Portfolio Reconciliation” and “Material Terms” for Purposes of Swap Portfolio Reconciliation, 81 FR 27309, 27311 (May 6, 2016).

CFTC Rule 23.500(g). Nevertheless, we are proposing to require all reported terms to be reconciled at least initially because, among other things, such requirement could potentially help to address an issue related to how registered SDRs can verify the information that they receive, as discussed in detail in Section I.E below. However, below we solicit comment on our approach, and particularly welcome comments on any trade-offs that may exist as between our efforts to address the SDR-related issue and any additional burdens resulting from a definition of “material terms” that departs from the corresponding CFTC rule, particularly in the context of CFTC-regulated Swap Entities that also may register with the Commission as SBS Entities.

3. Proposed Rule 15Fi-3(a): Portfolio Reconciliation With Other SBS Entities

The Commission is proposing to bifurcate proposed Rule 15Fi-3 based on the particular type of counterparty with which the SBS Entity transacts. For transactions between two SBS Entities, proposed Rule 15Fi-3(a) would require the two sides to engage in portfolio reconciliation at frequencies that are based on the size of the security-based swap portfolio between the two parties, expressed in ranges (or tiers).²⁹

Under this tiered approach, if the two SBS Entity counterparties maintain a security-based swap portfolio that includes 500 or more security-based swaps, portfolio reconciliation would need to occur once each business day for as long as the portfolio exceeds this threshold. If a security-based swap portfolio between two SBS Entities includes more than 50 but fewer than 500 security-based swaps on any business day during a week, portfolio reconciliation would be required to occur on a weekly basis. For a security-based swap portfolio between two SBS Entities that includes no more than 50 security-based swaps at any time during the calendar quarter, portfolio reconciliation would be required on a quarterly basis.³⁰

²⁹ See proposed Rule 15Fi-3(a).

³⁰ See proposed Rule 15Fi-3(a)(3). For the avoidance of doubt, if a security-based swap portfolio between two SBS Entity counterparties crosses from one threshold to another, both sides would be required to comply with the proposed rule as of the date that the requirement applies. For example, if two SBS Entities that have long maintained a portfolio of 50 or fewer security-based swaps (and accordingly reconcile on a quarterly basis) exceed the 50 transaction threshold, the two sides would become subject to the weekly reconciliation requirement as of the first day that the portfolio exceeds 50 security-based swaps (or the daily reconciliation requirement if the portfolio increases to 500 or more security-based swaps). By

²⁵ See proposed Rule 15Fi-1(i)(2).

²⁶ See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563, 14646 (Mar. 19, 2015) (“Regulation SBSR Adopting Release”).

The Commission preliminarily believes that the proposed tiering of obligations, whereby the frequency of the portfolio reconciliation would be based on the number of outstanding transactions with the applicable counterparty, represents a reasonable attempt to calibrate the costs to the benefits expected from reconciling a person's security-based swap portfolio at regular intervals. All other things being equal, a larger and more complex portfolio represents a greater potential for loss than a smaller, less complex portfolio. Therefore, the proposed rule would require more frequent reconciliation of the larger, more complex portfolio. We also note that the CFTC has adopted rules that utilize identical levels as our proposal, and that divergence from those thresholds could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities.³¹

In addition to the requirements regarding the frequency of the reconciliation, proposed Rule 15Fi-3(a)(1) would require SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who

contrast, if two SBS Entities that maintain a security-based swap portfolio of more than 500 transactions fall below that threshold, they could begin reconciling on a weekly basis as of the first business day after the date on which they were able to verify that their security-based swap portfolio has fallen below 500 transactions.

³¹ When it adopted the same numerical thresholds in 2012, the CFTC noted that the requirement to reconcile portfolios with 500 or more swaps on a daily basis was consistent with the commitments made by the OTC Derivatives Steering Group's 14 major dealers ("G-14 dealers") in December 2008 as well as international regulatory efforts underway at the time of the CFTC's release. See *CFTC Risk Mitigation Adopting Release*, 77 FR at 55928 nn. 35 and 36. See also Summary of OTC Commitments, Attachment to the June 2, 2009 letter from G-14 dealers and certain buy-side participants to William C. Dudley, President, FRBNY, available at: <https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2009/060209table.pdf> (committing, "[b]y June 30, 2009, [to] execute daily collateralized portfolio reconciliations for collateralized portfolios in excess of 500 trades between [Operations Management Group] dealers as detailed in the December 31, 2008 Collateral Update letter"). See also Attachment to the Mar. 31, 2011 letter from the G-14 dealers and certain buy-side participants to William C. Dudley, President, FRBNY, available at: <https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2011/SCL0331.pdf> ("We commit to reduce the threshold for routine portfolio reconciliation of collateralized portfolios from those exceeding 1,000 transactions to those exceeding 500 transactions starting June 30, 2011. These portfolios will be reconciled at least monthly.") (internal citation omitted).

may be performing the reconciliation.³² In practice, the Commission notes that an SBS Entity could satisfy such requirement by including the terms governing the portfolio reconciliation process in the written security-based swap trading relationship documentation that the SBS Entity executes with its counterparty which, pursuant to proposed Rule 15Fi-5 would be required to be executed prior to, or contemporaneously with, the two parties executing any new security-based swap transaction.³³ This practice should help to ensure that portfolio reconciliation begins without delay after execution of the transaction and is designed to minimize the number of disagreements regarding the portfolio reconciliation process itself.

Finally, the Commission has preliminarily determined not to propose the CFTC's definition of "business day" and to rely on the definition in existing Rule 15Fi-1, which was adopted in 2016 in connection with the trade acknowledgement and verification requirements in Rule 15Fi-2. That definition includes "any day other than a Saturday, Sunday, or legal holiday."³⁴ Specifically, we believe that the existing definition of "business day" is broadly consistent with other uses of the term within the Commission's rules.³⁵ We

³² Proposed Rule 15Fi-3(a)(2) provides that portfolio reconciliation may be performed either on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of the proposed rule. The Commission notes that CFTC Rule 23.502(a)(2), which is comparable to proposed Rule 15Fi-3(a)(2), uses the term "qualified third party." When it adopted the above provision in 2012, the CFTC explained that it "expects that parties will determine if the third-party is qualified based on their own policies." See CFTC Risk Mitigation Release, 77 FR at 55929. In addition, the CFTC's portfolio reconciliation requirements for transactions between Swap Entities and counterparties that are *not* Swap Entities do not require the relevant third party to be "qualified" and, instead, provide that "[t]he portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties." See 17 CFR 23.502(b)(2) (emphasis added). Accordingly, the Commission has decided not to refer to a "qualified third party" and, instead, uses the term "third party selected by the counterparties" for purposes of proposed Rule 15Fi-3(a)(2). We preliminarily believe that it is sufficient for our purposes to refer solely to the fact that a third party has been selected.

³³ Once the two parties have agreed in writing on the terms of the portfolio reconciliation for the first time, the requirement could then be satisfied in connection with any new security-based swap transaction executed by the two sides merely by agreeing in writing to abide by the existing agreement regarding the reconciliation process.

³⁴ Under this proposal, the definition of "business day" currently in Rule 15Fi-1(a) would be renumbered as proposed Rule 15Fi-1(b).

³⁵ See, e.g., 17 CFR 270.2a-7(a)(4) ("Business day means any day other than Saturday, Sunday, or any

also do not believe it necessary to have two different definitions of the same term promulgated under the same legal authority (*i.e.*, Section 15F(i) of the Exchange Act), one for purposes of the portfolio reconciliation rules and the other for purposes of the trade acknowledgement and verification rules.³⁶ Moreover, we believe that this definition provides market participants with the flexibility to determine which holidays are "legal holidays" for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi-3, which should be particularly useful given the cross-border nature of the OTC derivatives market.³⁷ However, below we solicit comment on our approach.

4. Proposed Rule 15Fi-3(a): Resolution of Discrepancies With Other SBS Entities

Proposed Rule 15Fi-3(a) also would require each SBS Entity to take additional actions in the event of a discrepancy with a counterparty that is an SBS Entity. First, proposed Rule 15Fi-3(a)(4) would require the two SBS Entities to resolve *immediately* any discrepancy in a material term, whether identified directly as part of the portfolio reconciliation or otherwise. We preliminarily believe that this timeframe is appropriate given the ongoing nature of security-based swap transactions, as well as the potential for disagreements between the counterparties regarding the terms of a transaction to compound over the course of the security-based swap transaction. We have not, however, proposed a fixed definition of "immediately" as we believe that the amount of time that will be needed to resolve a discrepancy will depend on the particular facts and circumstances involved, including the complexity of the material term in question and the

customary business holiday.") and 17 CFR 230.261(b) ("Business day [means] [a]ny day, except Saturdays, Sundays or United States federal holidays.').

³⁶ By contrast, the applicable definition of "business day" for purposes of the CFTC's portfolio reconciliation rules is contained in CFTC Rule 1.3(b), and includes "any day other than a Sunday or holiday." That definition also provides instructions for computing time periods for CFTC rules that include notice requirements.

³⁷ As a reminder, the proposal would require SBS entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation pursuant to proposed Rule 15Fi-3(a)(1) (in the case of security-based swap portfolios with other SBS Entities) and Rule 15Fi-3(b)(1) (in the case of security-based swap portfolios with all other counterparties). Accordingly, such agreement between an SBS Entity and its counterparty could include a determination as to which holidays would be considered "legal holidays" for purposes of any applicable portfolio reconciliation exercises involving those two parties.

magnitude of the discrepancy. We have, however, solicited comment on this approach.

At the same time, we also recognize that discrepancies related to the *valuation* of a security-based swap could be particularly difficult to resolve in a short period of time. Accordingly, proposed Rule 15Fi-3(a)(5) would require SBS Entities to have policies and procedures reasonably designed to resolve valuation discrepancies no later than five business days from the date they were discovered, which we preliminarily believe to be both a reasonable and appropriate amount of time to resolve such discrepancies. As a condition to this requirement, however, proposed Rule 15Fi-3(a)(5) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to identify how it will comply with any variation margin requirements under Section 15F(e) of the Exchange Act³⁸ and any related regulations pending resolution of the valuation discrepancy. Although we preliminarily believe that counterparties should be given sufficient time to resolve valuation discrepancies, we also believe it to be important for those counterparties to take reasonable steps during the pendency of the resolution to ensure that they are continuing to manage their credit risk to each other by way of exchanging variation margin.

Moreover, proposed Rule 15Fi-3(a)(5) provides that for purposes of the requirement to resolve valuation discrepancies within five business days of being identified, a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy. This 10% threshold would apply on a transaction-by-transaction basis and not on a portfolio level. As discussed in the immediately preceding paragraph, the Commission recognizes that valuation discrepancies could be challenging and costly to resolve. Accordingly, we preliminarily believe that providing SBS Entities with a clear understanding of exactly which valuation discrepancies would need to be resolved within five business days will help focus the internal resources of both counterparties on the largest discrepancies. At the same time, however, the Commission believes that, in most cases, prudent risk mitigation of a firm's security-based swap portfolio and proper governance over an entity's operations would involve ensuring that, at least to a certain degree, most

valuation discrepancies are ultimately resolved.³⁹

5. Proposed Rule 15Fi-3(b): Portfolio Reconciliation With Other Counterparties

Proposed Rule 15Fi-3(b) would establish reconciliation requirements for security-based swap portfolios between an SBS Entity and a counterparty that is *not* an SBS Entity. Although there is some broad similarity between proposed Rule 15Fi-3(b) and the rules applicable to security-based swap portfolios between two SBS Entities, we have preliminarily determined to take a more streamlined approach with respect to security-based swaps between an SBS Entity and its non-SBS Entity counterparties, similar to the CFTC's approach. This approach reflects our preliminary view that a dealer-to-dealer portfolio may be associated with a degree of market interconnectedness and volume that could potentially carry considerable market-wide risks, at least as compared to a security-based swap portfolio that involves only one SBS Entity. Moreover, the Commission preliminarily believes it to be appropriate to impose more prescriptive requirements in cases where both entities are subject to the SEC's requirements for registered entities. Accordingly, there are differences in both the application of the portfolio reconciliation requirements with non-SBS Entity counterparties as well as in the thresholds governing the frequency of the required reconciliation exercises.

Specifically, the proposal would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation with non-SBS Entity counterparties as set forth in the rule.⁴⁰ This is in contrast to proposed Rule 15Fi-3(a), which expressly requires portfolio reconciliation with respect to transactions where both counterparties are SBS Entities. In addition, the policies and procedures would require

³⁹ For the avoidance of doubt, an SBS Entity that identifies a valuation discrepancy in excess of 10% would be in compliance with the proposed rule if it resolves such discrepancy to a level below 10%, even if the entire discrepancy is not completely eliminated. Thus, an SBS Entity would not be required to reduce an 11% valuation discrepancy down to zero, in contrast to an SBS Entity with a 9% valuation discrepancy, who would have no further obligations under proposed Rule 15Fi-3(a)(5).

⁴⁰ See proposed Rule 15Fi-3(b). Additionally, proposed Rule 15Fi-3(b) contains a slight deviation from corresponding CFTC Rule 23.502(b) to eliminate language that we believe to be redundant. We do not intend for such clarification to signify any substantive differences between proposed rule Rule 15Fi-3(b) and CFTC Rule 23.502(b).

that the portfolio reconciliation be performed no less frequently than: (1) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter and (2) once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.⁴¹

As we previously explained, the Commission preliminarily believes that basing the required frequency of the portfolio reconciliation on the number of outstanding transactions with the applicable counterparty represents a reasonable attempt to calibrate the costs to the benefits expected from reconciling a person's security-based swap portfolio at regular intervals. As we also noted above, all other things being equal a larger and more complex portfolio represents a greater potential for loss than a smaller, less complex portfolio. As before, in selecting the specific levels we recognize that the CFTC has adopted rules with identical thresholds and frequencies and that divergence from those thresholds could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities.⁴²

In addition, paragraph (b)(1) of proposed Rule 15Fi-3 would require that the applicable policies and procedures be reasonably designed to ensure that each SBS Entity agrees in writing with each of its non-SBS Entity counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation, and paragraph (b)(2) provides that under such required policies and procedures, the portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties.⁴³ To the extent that the counterparties elect to use a third party to provide these services, the policies and procedures should be reasonably designed to ensure that the SBS Entity and its counterparty agree on the selection of that third party in writing in accordance with the requirements set forth in proposed Rule 15Fi-3(b)(1).⁴⁴

⁴¹ See proposed Rule 15Fi-3(b)(3).

⁴² See *supra* note 31 (discussing how the CFTC arrived at setting the numerical thresholds for the requirement to engage in portfolio reconciliation as between two Swap Entities.).

⁴³ See proposed Rules 15Fi-3(b)(1) and (2).

⁴⁴ See proposed Rule 15Fi-3(b)(2). As noted in the discussion of the corresponding provision in Rule 15Fi-3(a)(1), an SBS Entity could in practice

Finally, proposed Rule 15Fi-3(b)(4) would require each SBS Entity to establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the valuation or a material term of each security-based swap identified as part of a portfolio reconciliation or otherwise with a non-SBS Entity counterparty in a timely fashion.⁴⁵ We are reluctant to provide a fixed definition of “timely fashion” in the context of resolving discrepancies with counterparties who are not SBS Entities due to the fact that such counterparties may vary considerably in terms of their size, sophistication, and background. Although it may be possible to resolve most valuation discrepancies with large hedge funds and pension funds within the five-business-day period applicable to transactions between two SBS Entities, that timeframe may be much more challenging with respect to transactions with smaller buy-side firms. Accordingly, below we request comment on the amount of time SBS Entities should be provided to resolve discrepancies in the valuation or a material term with respect to transactions with a non-SBS Entity counterparty. Commenters are particularly encouraged to explain how any recommended time period appropriately balances the importance of quickly resolving valuation discrepancies to the greatest extent possible, with an understanding that more complex discrepancies could involve the need for additional discussion and time for resolution.

6. Reporting of Valuation Disputes

Valuation is one of the most fundamental elements for determining the economic rights and obligations of each of the counterparties to a security-

satisfy such requirement by including the terms governing the portfolio reconciliation process in the written security-based swap trading relationship documentation that it executes with its counterparty which, pursuant to proposed Rule 15Fi-5 would be required to be executed prior to, or contemporaneously with, the two parties executing any new security-based swap transaction. In addition, once the two parties have agreed in writing on the terms of the portfolio reconciliation for the first time, the requirement could then be satisfied in connection with any new security-based swap transaction executed by the two sides merely by agreeing in writing to abide by the existing agreement regarding the reconciliation process. See *supra* notes 32 and 33 and accompanying text.

⁴⁵ Similar to the requirement in paragraph (a) of the proposed rule for portfolio reconciliation with counterparties that are also SBS Entities, proposed Rule 15Fi-3(b)(4) provides that a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy for purposes of that paragraph. See *supra* note 39 and accompanying text (discussing the 10% threshold in the context of Rule 15Fi-3(a)(5)).

based swap transaction. For example, market participants manage their credit risks to their counterparties by exchanging margin with each other in an amount determined using the value of the underlying security-based swap. If those valuations are not accurate for any reason, such as human or system errors, problems with the valuation methodology, or an issue affecting the timeliness of the calculation, that error could result in one of the counterparties having an uncollateralized credit exposure and a potential for loss in the event of a default.

Given those risks, proposed Rule 15Fi-3(c) would require each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level,⁴⁶ if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity. Such notification would be required to be in a form and manner acceptable to the Commission,⁴⁷ and would also be required to be sent to any applicable prudential regulator (*i.e.*, in the case of any SBS Entity that is also a bank).⁴⁸

⁴⁶ The language “at either the transaction or portfolio level” is not included in CFTC Rule 23.502(c), which is the corresponding requirement applicable to Swap Entities. The specific requirements as to the operation of CFTC Rule 23.502(c) are contained in the rules of the National Futures Association (“NFA”), which the CFTC has authorized to, among other things, receive and review notices of reportable swap valuation disputes. See Performance of Certain Functions by the National Futures Association Related to Notices of Swap Valuation Disputes Filed by Swap Dealers and Major Swap Participants, 81 FR 3390 (Jan. 21, 2016). A detailed discussion of the NFA requirements, including with respect to whether notices of swap valuation disputes should be filed at either the transaction or portfolio level, is set forth at the end of this Section I.B.6.

⁴⁷ With respect to the language addressing the form and manner of submitting such notices, our intention is to provide SBS Entities with flexibility to determine the most efficient and cost-effective means of making such submissions, so long as it is deemed to be acceptable by the Commission. At the same time, we also understand that SBS Entities may prefer to have more specific direction as to how to report these disputes to the Commission (and any applicable prudential regulator). Accordingly, below we solicit comment on the form of notice that would be required to be submitted pursuant to the proposal.

⁴⁸ Additionally, the Commission is proposing to amend Rule 15Fi-1 to add the term “prudential regulator,” which would be defined to have the same meaning given to the term in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74), and would include the Federal Reserve Board, the Office of the Comptroller of the Currency, the FDIC, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the specific type of SBS Entity. See proposed Rule 15Fi-1(m).

We note that the CFTC has adopted a nearly identical requirement with the same \$20,000,000 threshold and timeframes, and that divergence from those requirements could lead to additional costs and other inefficiencies for SBS Entities that are also registered with the CFTC as Swap Entities.⁴⁹ In addition, when the CFTC adopted this requirement, it explained that “the \$20,000,000 materiality threshold for reporting is sufficiently high to eliminate unnecessary ‘noise’ from over-reporting, but not so high as to eliminate reporting that the [CFTC] may find of regulatory value, such as a large number of relatively small disputes that in aggregate could provide the [CFTC] with information regarding a widespread market disruption.”⁵⁰ We preliminarily concur with that justification, and also note that such notifications could assist the Commission in identifying potential issues with respect to an SBS Entity’s internal valuation methodology. That said, we also invite public comment as to whether the dollar threshold or reporting periods should be modified in any way.⁵¹

Finally, the Commission notes that on January 2, 2018, the NFA’s Interpretive Notice entitled, “NFA Compliance Rule 2-49: Swap Valuation Dispute Filing Requirements” went into effect.⁵² Among other things, that interpretive notice describes the types of disputes that would trigger a notice requirement. Specifically, if the swap dealer and its counterparty exchange collateral, NFA

⁴⁹ See CFTC Risk Mitigation Adopting Release 77 FR at 55914.

⁵⁰ *Id.* The CFTC has a nearly identical requirement in its Rule 23.502(c), except that it also requires Swap Entities to send such notices to the Commission when the dispute involves a swap that is also a security-based swap agreement, of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein. See 17 CFR 23.502(c) (citing the inclusion of security-based swap agreements in the definition of “swap” in 7 U.S.C. 1a(47)(v)). Because there is no corresponding inclusion of swap agreements in the definition of “security-based swap agreement” in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)), proposed Rule 15Fi-3(c) does not contain a requirement to provide notices of any security-based swap valuation disputes to the CFTC.

⁵¹ We have preliminarily determined not to provide a fixed definition of the term “promptly” in the context of when the SBS Entity would need to provide the Commission of an applicable security-based swap valuation dispute. Although we would expect that SBS Entities would be able to provide these notices to the Commission as soon as the disputes exceed the applicable timeframes (*e.g.*, the beginning of fourth business day in the case of a dispute between two SBS Entities), we also understand that some notices may take longer to prepare, such as in cases when the counterparties are unable to agree even on the size of the dispute.

⁵² See NFA Interpretive Notice to Rule 2-49, available at: <https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9072>.

Interpretive Notice to Rule 2–49 provides that the swap dealer would be required to file notice of any dispute regarding (1) the amount of initial margin to be posted or collected pursuant to a collateralized eligible master netting agreement⁵³ if the dispute exceeds the \$20 million reporting threshold and (2) the amount of variation margin to be posted or collected pursuant to such master netting agreement if the dispute exceeds the \$20 million reporting threshold. Because master netting agreements by definition operate at the portfolio level, such notices also would apply to the relevant swap portfolio.

To the extent that a swap dealer and its counterparty do not exchange collateral, NFA Interpretive Notice to Rule 2–49 requires the swap dealer to submit a notice to the NFA upon being notified by its counterparty that such counterparty is disputing any valuation provided by the swap dealer if the dispute exceeds the \$20 million reporting threshold. Such notices would either be at the portfolio or transaction level, depending on the particular valuation in question. That is, if the counterparty disputes a valuation provided by the swap dealer related to a particular transaction, the notice provided by the swap dealer to the NFA also would need to be at the transaction level. By contrast, if the counterparty disputes a portfolio valuation provided by the swap dealer, the notice provided by the swap dealer to the NFA also would need to be at the portfolio level.⁵⁴

NFA Interpretive Notice to Rule 2–49 also provides that swap dealers should not file a daily notice of a previously reported dispute even if the valuation dispute amount changes. Instead, swap dealers are required to notify the NFA of certain changes to the dispute amount on the 15th (or the following business day if the 15th is a weekend or holiday) and last business day of each month by amending any previously filed notice where the dispute amount has increased in \$20 million incremental bands.⁵⁵

⁵³ NFA Interpretive Notice to Rule 2–49 defines “collateralized eligible master netting agreement” to include an eligible master agreement, including any applicable schedule and credit support annex.

⁵⁴ See *id.* See also Transcript of the NFA Swap Valuation Dispute Notices and Swap Dealer Risk Data Reports Webinar (Oct. 12, 2017), available at: <https://www.nfa.futures.org/members/member-resources/files/transcripts/svdwebinar-transcript-oct2017.pdf>.

⁵⁵ See NFA Interpretive Notice to Rule 2–49, supra note 52. NFA Interpretive Notice to Rule 2–49 provided an example of a swap dealer that filed a notice of a \$30 million dispute, noting that an amended notice updating the dispute amount would be required if that dispute increases to \$40 million or more and each subsequent \$20 million increment (*i.e.*, the dispute amount increases to \$60

NFA Notice to Interpretive Rule 2–49 also requires swap dealers to file termination notices of disputes that are no longer reportable under CFTC Rule 23.502(c).⁵⁶ In addition, on July 20, 2017, NFA issued a Notice to Members (I–17–13) outlining the types of disputes that must be reported under the Interpretive Notice to Rule 2–49 and specifying the information that will be required in NFA’s dispute form.⁵⁷ Below we solicit comment on whether the Commission should incorporate some or all of the NFA’s approach, including with respect to any of the specific requirements described above, directly into proposed Rule 15Fi–3(c).

7. Application of Proposed Rule 15Fi–3 to Cleared Security-Based Swaps

Pursuant to proposed Rule 15Fi–3(d), the new requirements regarding portfolio reconciliation would not apply to a “clearing transaction” which, pursuant to existing Rule 15Fi–1(c) under the Exchange Act, is defined as a security-based swap that has a clearing agency as a direct counterparty.⁵⁸ Notwithstanding this provision, the Commission understands that some parties may offer portfolio reconciliation services with respect to OTC derivative transactions novated to a clearing agency. Although the Commission recognizes the importance of reconciling

million or more, \$80 million or more, etc.), or if the amount decreases at these \$20 million increments.

⁵⁶ See *id.* Under NFA Interpretive Notice to Rule 2–49, the termination notice would be due on the 15th (or the following business day if the 15th is a weekend or holiday) and the last business day of the month based on the dispute amount on the reporting date.

⁵⁷ See NFA Notice to Members I–17–30, available at <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4827>. That notice provided that all swap valuation disputes must include: (1) The swap dealer’s NFA ID and legal entity identifier (“LEI”), (2) the dispute reportable date, (3) the dispute type, (4) the dispute termination date, (5) the receiver/payer, (6) the disputed amount, in U.S. Dollars (“USD”), (7) the counterparty name, and (8) counterparty LEI or Privacy Law Identifier. For initial and variation margin disputes, the swap dealer would also be required to provide (1) the unique swap identifier, (2) the base currency notional amount, (3) the base currency code, (4) the notional value USD equivalent, (5) the asset type, and (6) the product type. For disputes where no collateral is exchanged, the notice also would need to include the credit support annex/netting agreement ID.

⁵⁸ See proposed Rule 15Fi–3(d). Under existing Rule 15Fi–1(b) under the Exchange Act (which would be renumbered as Rule 15Fi–1(c) under the proposed rules), the term “clearing agency” means a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act and provides central counterparty services for security-based swap transactions. See also Trade Acknowledgement and Verification Adopting release, 81 FR at 39820–21 (explaining the agency and principal models of clearing in the context of providing a comparable exception from the trade acknowledgement and verification requirements).

the terms of security-based swap transactions between a clearing member (either acting on its own behalf or for the benefit of a customer) and the clearing agency, we preliminarily believe that the issue of reconciling the terms of cleared trades is more appropriately addressed by the rules governing a clearing agency’s risk management practices, as well as by the documentation governing the relationship between a clearing agency and its members.

8. Comments Requested

The Commission generally requests comments on all aspects of proposed Rule 15Fi–3, as well as any definitions in Rule 15Fi–1 that are used in proposed Rule 15Fi–3. In addition, the Commission requests comments on the following specific issues:

- Do commenters agree with the three activities comprising the scope of the Commission’s proposed definition of “portfolio reconciliation”? Why or why not?

- Do you agree that the scope of the proposed definition of “material terms” for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi–3 should be coterminous with the terms of a security-based swap that must be reported to an SDR under Regulation SBSR? Why or why not? Do you believe that there are any terms that must be reported to an SDR that should *not* be subject to the proposed portfolio reconciliation requirements? If so, which term(s) and why?

- As opposed to using a fixed definition of “material terms,” should the Commission adopt a more flexible definition? For example, are there other uses of materiality, such as with regard to the disclosure of information in registration statements (including accounting statements) or proxy solicitations that would be useful to include? Why or why not?

- Do you agree with the Commission’s preliminary approach of allowing SBS Entities to exclude certain information from the definition of “material terms” after a transaction is reconciled the first time so long as the excluded terms are not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap? Alternatively, should the definition be revised to conform to the corresponding CFTC definition, which excludes certain terms for purposes of all portfolio reconciliations? Why or why not? With respect to either approach, which terms should be excluded and why? For example, should the final definition include as rule text some or all of the specific data elements

excluded from the CFTC's definition? Which ones and why? By contrast, are there any terms that would be excluded for purposes of subsequent reconciliations under the proposed approach that should also be excluded from the initial reconciliation? Which ones and why?

- Do commenters agree with the decision to use the existing definition of "business day" (as currently in effect for the security-based swap trade acknowledgement and verification requirements) for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi-3? If not, why not and how should that definition be modified for purposes of the proposed portfolio reconciliation requirements? For example, should the definition specify which jurisdiction's legal holidays are the default for specifying which holidays are not included in the definition of "business days"? Would the differences between the proposed definition of "business day" and the corresponding CFTC definition (which includes "any day other than a Sunday or holiday") create any practical difficulties for dual SEC-CFTC registrants? If so, what are they? Should the Commission instead adopt a definition of "business day" that mirrors the CFTC definition? Why or why not?

- Do commenters agree with the proposed approach of basing the required frequency of portfolio reconciliation in proposed Rule 15Fi-3 on the type of counterparty involved (*i.e.*, its status as an SBS Entity) and on the size of the security-based swap portfolio? If not, why not? If commenters believe that the proposed approach should be retained, should any of the particular frequencies proposed (*e.g.*, daily, weekly, quarterly, or annually) be modified to be either more or less frequent?

- Proposed Rule 15Fi-3 permits the portfolio reconciliation exercises required thereunder to be performed by a third party, with the only qualification being that the selection of that third party has been agreed to by both of the parties in writing. As an alternative approach, should the Commission instead establish specific requirements for qualifying third parties that offer portfolio reconciliation services used for compliance with the rule? If so, how should a third party be deemed to be qualified to provide portfolio reconciliation services and who should make such a determination?

- Should the Commission's rules require two SBS Entities to resolve a discrepancy in a material term "immediately"? Why or why not?

Should the Commission define or provide an interpretation of the term "immediately," such as "without undue delay," or, as an alternative, specify a fixed period of time in the rule text within which SBS Entities would be required to comply with proposed Rule 15Fi-3(a)(4)? Why or why not and, if so, how much time should be provided?

- Are there any current industry practices that relate to how counterparties to swaps and security-based swaps resolve discrepancies in a material term in the case of a dealer-to-dealer transaction? If any such practices exist, please describe them, including with regard to the length of time that it typically takes to resolve these types of discrepancies. Are there particular material terms for which a discrepancy typically takes a longer (or shorter) amount of time to resolve? If so, which ones?

- Should the Commission require SBS Entities to have policies and procedures reasonably designed to resolve any discrepancy in a valuation (with another SBS Entity) identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified? Why or why not? Should SBS Entities be provided with more days to resolve these discrepancies? Should they have fewer days?

- Are there any current industry practices that relate to how counterparties to swaps and security-based swaps resolve valuation discrepancies in the case of a dealer-to-dealer transaction? If any such practices exist, please describe them, including with regard to the length of time that it typically takes to resolve these types of discrepancies. Are there particular circumstances that typically make valuation disputes more (or less) difficult and time-consuming to resolve? If so, which ones?

- Should the Commission require SBS Entities to have policies and procedures reasonably designed to resolve any discrepancy in a valuation or material term with a counterparty that is not an SBS Entity (identified either as part of a portfolio reconciliation or otherwise) in a timely fashion? Why or why not? Should the Commission define or provide an interpretation of the term "timely fashion," or, as an alternative, specify a fixed period of time in the rule text within which SBS Entities would be required to comply with proposed Rule 15Fi-3(b)(4)? Why or why not and, if so, how much time should be provided? In suggesting potential timeframes, we note that the period for resolving

discrepancies in a valuation or material term with *non-SBS Entities* should likely not be shorter than the five business days provided in the parallel requirement applicable to valuation discrepancies between two *SBS Entities*. Should the Commission look at any other similar provisions under the federal securities laws addressing dispute resolution procedures as a guide for determining the amount of time that an SBS Entity should be provided to resolve discrepancies pursuant to proposed Rule 15Fi-3(b)(4)? If so, which ones?

- Are there any current industry practices that relate to how counterparties to swaps and security-based swaps resolve discrepancies in a valuation or material term in the case of a transaction between a dealer and a non-dealer? If any such practices exist, please describe them, including with regard to the length of time that it typically takes to resolve these types of discrepancies. Are there particular terms for which a discrepancy typically takes a longer (or shorter) amount of time to resolve? If so, which ones? In this context, should valuation discrepancies be treated differently than discrepancies in some (or all) material terms? If so, which ones and why?

- Do you agree with the Commission's proposed approach of deeming valuation differences of less than 10% not to be discrepancies for purposes of requiring resolution under either proposed Rule 15Fi-3(a)(5) or (b)(4)? If not, why not and how should the rules address the resolution of valuation differences? Should the threshold be based on the actual dollar amount of the valuation difference (or the related currency equivalent) instead of being expressed as a percentage of the difference of the two amounts?

- How has the 10% threshold functioned in the context of CFTC rules applicable to Swap Entities? Has that threshold been under-inclusive, in the sense that it may not identify a sufficient number of swap valuation discrepancies that could affect performance under the swap transaction? Why or why not? By contrast, has the CFTC's 10% threshold been over-inclusive, in the sense that it has captured swap valuation discrepancies that typically would not affect performance under the swap transaction? Why or why not?

- Proposed Rule 15Fi-3(c) would require SBS Entities to promptly notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator of any security-based swap valuation dispute in excess of \$20,000,000 (or its

equivalent in any other currency) if not resolved within either three business days, if the dispute is with a counterparty that is an SBS Entity, or five business days, if the dispute is with a counterparty that is not an SBS Entity. Do commenters agree with this requirement? Why or why not? As an alternative, should the Commission instead require SBS Entities to make and keep records of these unresolved disputes? Why or why not? Is \$20,000,000 the appropriate threshold for notifying the Commission of unresolved disputes? If not, should the threshold be higher or lower? Should the threshold instead be expressed as a percentage? Do commenters agree with the proposed timeframes for submitting such a report? If not, should they be increased or decreased?

- Should the Commission establish a specific process for how SBS Entities would need to provide notices of valuation disputes to the Commission pursuant to proposed Rule 15Fi-3(c)? If so, how should such notices be provided? For example, should the Commission require that such notices be submitted in electronic format through the EDGAR system (or any successor system thereto, as designated by the Commission)? Why or why not? Alternatively, should the Commission create a dedicated email box to accept such notices in letter format? Why or why not? Should these notices be submitted on a confidential basis? If so, how would that affect the potential delivery options?

- As discussed above, the NFA has issued an interpretive notice to NFA Compliance Rule 2-49 and a separate notice to its members that, together, specify the timing, frequency, and contents for submitting notices of swap valuation disputes pursuant to CFTC Rule 23.502(c).⁵⁹ Should the Commission consider incorporating some or all of those requirements into proposed Rule 15Fi-3(c) at adoption? If so, which ones and why, and should any of the requirements promulgated by the NFA be modified as part of the process of incorporating them into the Commission's rules to account for differences between the swap and security-based swap markets?

- Do commenters agree with the proposed exception from the reconciliation requirement for clearing transactions? Why or why not? Because the definition of "clearing transactions" only includes transactions cleared at a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act, security-based swaps

cleared at a foreign clearing agency that is not registered with the Commission would *not* be deemed to be "cleared" for these purposes, and would therefore be subject to proposed Rule 15Fi-3. Should the Commission modify the scope of the exception for cleared security-based swaps, such as by including transactions that are cleared at a clearing agency that is not registered with the Commission pursuant to Section 17A of the Exchange Act, whether because of an applicable exemption from registration or because the Exchange Act does not cover the activities of the clearing agency? Why or why not?

- With respect to any Swap Entity that could potentially register with the Commission as an SBS Entity, would the portfolio reconciliation protocols (or any other applicable documentation) already in existence with respect to CFTC Rule 23.502 satisfy the requirements in proposed Rule 15Fi-3? Why or why not? Should proposed Rule 15Fi-3 be modified to account for the way that market participants have designed their existing protocols (or any other applicable documentation) to be compliant with the CFTC's rules? Why or why not? For the purposes of compliance with the proposed portfolio reconciliation rules, should the Commission allow compliance with the CFTC's parallel requirements for some period of time to allow dual SEC-CFTC registrants to conform their existing portfolio reconciliation protocols (or any other applicable documentation) following the adoption of proposed Rule 15Fi-3? If so, on what factors should that reliance be conditioned and how long of a compliance period should be provided? In the alternative, should the Commission delay compliance with, or establish phased compliance deadlines for, some or all of these requirements? Please explain the nature of any compliance challenges (including any additional documentation requirements), and the basis for any suggested compliance period.

- As previously noted, proposed Rule 15Fi-3 has been designed to be as consistent as possible with CFTC Rule 23.502, which imposes portfolio reconciliation requirements on Swap Entities, in order to avoid requiring dual SEC-CFTC registrants to incur additional systems or compliance costs due to differences between the two agencies' approaches. To the extent that any such differences remain, should the Commission consider, for any firm dually-registered as both an SBS Entity and Swap Entity (regardless of whether such firm is also registered with the Commission as a broker-dealer or with

the CFTC as a futures commission merchant), permitting such firm to comply with proposed Rule 15Fi-3 on an ongoing basis by complying with CFTC Rule 23.502, as if such rule applied to security-based swaps? If so, what conditions, if any, should be placed on such reliance?

- Should SBS dealers and major SBS participants be treated the same for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi-3? Why or why not?

C. Rule 15Fi-4 (Portfolio Compression)

1. Overview of Portfolio Compression

Portfolio compression generally refers to a post-trade processing exercise that allows two or more market participants to eliminate redundant derivatives transactions within their portfolios in a manner that does not change their net exposure. Compression exercises typically take place in "cycles," whereby each participating counterparty designates particular contracts within its portfolio as being eligible for compression and specifies its risk tolerances with respect to the composition of its derivatives portfolio following completion of the cycle.⁶⁰ Following an analysis of the submitted contracts, counterparties may be provided with the option of terminating or modifying those contracts and replacing them with a smaller number of substantially similar contracts. In most cases, the gross notional value of the replacement and remaining contracts is reduced, although the counterparty's net exposure typically remains the same.⁶¹

By reducing the total number of open contracts, portfolio compression is intended to help market participants manage their post-trade risks in a number of important ways. For example, two or more counterparties

⁶⁰ See, e.g., ISDA Study, *Interest Rate Swaps Compression: A Progress Report*, (Feb. 2012), available at: <http://www2.isda.org/attachment/NDAzMw==/IRS%20compression%20progress%20report%20-%20Feb%202012.pdf>.

⁶¹ In 2011, the Commission issued an order granting temporary exemptions from the requirement to register as a clearing agency under Section 17A of the Exchange Act for entities providing certain clearing services for security-based swaps including, among other things, tear-up and compression services. That order contains general descriptions of the portfolio compression process, based on discussions between Commission staff and market participants prior to the issuance of the exemptive order. See Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions from Clearing Agency Registration Requirements under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps, Exchange Act Release No. 64796 (Jul. 1, 2011), 76 FR 39963 (Jul. 7, 2011) ("Clearing Services Exemptive Order").

⁵⁹ See *supra* notes 52-57 and accompanying text.

that are active in the OTC derivatives markets might have built up positions in the same (or comparable) products that, when analyzed at the portfolio level across all applicable counterparties, offset each other. Eliminating these offsetting and redundant uncleared derivatives transactions through compression—as measured both by the number of contracts and total notional value—reduces a market participant's gross exposure to its direct counterparties, including by eliminating all exposure to certain counterparties.⁶² Reducing the total number of outstanding contracts within a derivatives portfolio also provides important operational benefits and efficiencies for market participants in that there are fewer open contracts to manage, maintain, and settle, resulting in fewer opportunities for processing errors, failures, or other problems that could develop throughout the lifecycle of a transaction.⁶³ Accordingly, the Commission preliminarily believes that the use of portfolio compression by SBS Entities, where appropriate given the circumstances (and to the extent that such activity is not already occurring), should provide important processing improvements consistent with the overall framework of Section 15F(i) of the Exchange Act.⁶⁴

⁶² See Darrell Duffie, Ada Li, and Theo Lubke, Policy Perspectives of OTC Derivatives Market Infrastructure, FRBNY Staff Report No. 424, dated Jan. 2010, as revised Mar. 2010, available at: http://www.newyorkfed.org/research/staff_reports/sr424.pdf (“FRBNY OTC Derivatives Report”) (“In some types of derivatives that are not cleared, major market participants tend to build offsetting positions with different counterparties, long with one set of counterparties, and short with the others. In many cases, these offsetting positions are redundant. They serve no useful business purpose and create counterparty risk. Market participants should continue to engage in regular market-wide portfolio compression exercises in order to eliminate these redundant positions.”). See also, John Kiff, *et al.*, Credit Derivatives: Systemic Risks and Policy Options, IMF Working Paper No. 254 (Nov. 2009), available at: <http://www.imf.org/external/pubs/ft/wp/2009/wp09254.pdf> (“Multilateral netting, typically operationalized via ‘tear-up’ or ‘compression’ operations that eliminate redundant contracts, reduces both individual and system counterparty credit risk.”).

⁶³ See Portfolio compression platform launched to reduce CDS operational risk, Hedgeweek (Sept. 8, 2008) (explaining that a portfolio compression platform “reduces operational risk while leaving market risk profiles unchanged,” which is achieved “by terminating existing trades and replacing them with a smaller number of new replacement trades that carry the same risk profile and cash flows as the initial portfolio but have less capital exposure”).

⁶⁴ See 15 U.S.C. 78o–8 (requiring SBS Entities to “conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps”).

2. Scope of Proposed Rule 15Fi–4—Portfolio Compression Exercises

For purposes of proposed Rule 15Fi–4 under the Exchange Act, the phrase “portfolio compression exercise” would generally refer to an exercise by which security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.⁶⁵ In order to incorporate that concept into the proposal, the Commission is proposing to amend Rule 15Fi–1 to create definitions for both “bilateral portfolio compression exercise”⁶⁶ and “multilateral portfolio compression exercise.”⁶⁷ These two definitions are nearly identical, with the sole difference being that the former would apply to a portfolio compression exercise that includes only two security-based swap counterparties, while the latter would refer to a portfolio compression exercise that includes more than two security-based swap counterparties.⁶⁸

Under proposed Rule 15Fi–4(a), SBS Entities would be required to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with any counterparties that are SBS Entities.⁶⁹ To the extent that an SBS Entity transacts with counterparties that are not SBS Entities, proposed Rule 15Fi–4(b) provides that the policies and procedures required under the proposed rule would require that portfolio compression exercises occur when

⁶⁵ The corresponding CFTC rule is 17 CFR 23.503. The structure of the CFTC rule, including the subsections, mirrors the structure of proposed Rule 15Fi–4.

⁶⁶ See proposed Rule 15Fi–1(a). The corresponding CFTC definition is in 17 CFR 23.500(b).

⁶⁷ See proposed Rule 15Fi–1(j). The corresponding CFTC definition is in 17 CFR 23.500(h).

⁶⁸ As noted below in Section I.C.4, proposed Rule 15Fi–4 is applicable only to uncleared security-based swaps.

⁶⁹ See proposed Rules 15Fi–4(a)(2) and (3).

appropriate⁷⁰ and only to the extent requested by any such counterparty.⁷¹

The proposed definitions of “bilateral portfolio compression exercise” and “multilateral portfolio compression exercise” are designed to be sufficiently broad as to provide market participants with maximum flexibility when complying with proposed Rule 15Fi–4, while also retaining the key elements necessary to achieve the important risk reducing benefits previously discussed—namely the reduction of counterparty and operational risk achieved by terminating offsetting security-based swap transactions. Accordingly, we are not proposing specific requirements as to the contents of the policies and procedures created to comply with these rules.⁷² In addition, for consistency with the rules applicable to Swap Entities, these definitions are substantively identical to the CFTC’s corresponding definitions, which we preliminarily believe are appropriately scoped and clear for purposes of proposed Rule 15Fi–4.

⁷⁰ CFTC Rule 23.503(b), which is the corresponding CFTC compression rule applicable to transactions with counterparties that are not SBS Entities does not contain the caveat that the compression or offset covered by the applicable policies and procedures would only need to occur “when appropriate.” Rather, we preliminarily believe it to be prudent to allow an SBS Entity to engage in bilateral offset or compression exercises (to the extent requested by its non-SBS Entity counterparty) only in circumstances when doing so was appropriate for the SBS Entity in light of the particular facts and circumstances involved, recognizing of course that such discretion should not be used by the SBS Entity arbitrarily not to honor the request by its counterparty. Below we solicit comment on this difference.

⁷¹ See proposed Rule 15Fi–4(b). As we noted in discussing the proposed portfolio reconciliation requirements, the Commission preliminarily believes it to be appropriate to impose more prescriptive requirements in cases where both entities are subject to the SEC’s requirements for registered entities.

⁷² The one exception to this statement is the requirement in both proposed Rules 15Fi–4(a)(2) and (a)(3) that such policies and procedures address the evaluation of portfolio compression exercises that are initiated, offered, or sponsored by any third party. The Commission preliminarily believes that the decision of which party to use (or not use) to conduct a compression exercise is of critical importance to the overall determination of whether to participate in compression. Although the Commission takes no position with respect to the type or identity of the party used to conduct a compression exercise, we recognize that a number of parties are currently offering such services, including third-party vendors and some self-regulatory organizations (e.g., clearing agencies). The Commission also understands that there may be some instances where compression could be performed without the use of a third-party service provider.

Rather, the Commission recognizes that a decision to engage in a process that could ultimately result in the termination or modification of existing contracts, and the potential entry into new ones, should be made in accordance with policies and procedures that are tailored to the specific risks and operations of the relevant SBS Entity. Such policies and procedures should, in the Commission's view, be permitted to take into account the specific risk tolerances of the regulated entity, including with respect to such areas as operational, funding, liquidity, and credit risk, and also reflect the possibility that firms may have legitimate business reasons for maintaining certain offsetting security-based swap positions, even if in theory they could be compressed.

For example, the Commission understands that an SBS Entity might be unable to participate in a particular portfolio compression exercise that could result in it transacting with certain counterparties (*e.g.*, because a counterparty poses an unacceptable level of credit risk), or in certain types of transactions. To the extent that such limitations exist and are reflected in the policies and procedures required pursuant to proposed Rules 15Fi-4(a) and (b), an SBS Entity would be in compliance with the proposed rules so long as it follows those policies and procedures, even if it determines not to engage in a particular compression exercise.

Finally, in comparing the requirements we are proposing today with respect to bilateral and multilateral compression exercises with those previously adopted by the CFTC, we note two differences that we believe to be minor and technical in nature. First, CFTC Rule 23.503(a)(3)(i) requires that any policies and procedures related to multilateral portfolio compression address, among other things, participation in all multilateral portfolio compression exercises required by CFTC regulation or order. We have preliminarily determined not to include a comparable requirement in proposed Rule 15Fi-4(a)(3). Although the Commission would expect that any comprehensive policy or procedure would, as a matter of course, reflect any applicable laws and regulations expressly mandating participation in certain types of portfolio compression exercises, there are currently no Commission regulations or orders mandating participation in any particular type of portfolio compression exercise, and we are reluctant to include a requirement that could lead to

confusion by suggesting that such regulations or orders exist.

Second, CFTC Rule 23.503(a)(3)(ii) requires that any policies and procedures related to *multilateral* portfolio compression exercises evaluate, among other things, any services that are initiated, offered, or sponsored by any third party.⁷³ The CFTC did not, however, include such a requirement in the corresponding requirement related to policies and procedures addressing *bilateral* portfolio compression exercises.⁷⁴ Although the inclusion of a specific requirement in the rule should not be interpreted as creating an exhaustive list of what we would expect to see included in the policies and procedures, we understand that bilateral portfolio compression services are currently being offered by third-party vendors. Evaluating those services would seem to be a natural part of the process of broadly analyzing the applicability of bilateral compression in general. Therefore, we are proposing to expressly include a similar requirement in *both* proposed Rules 15Fi-4(a)(2) (policies and procedures regarding bilateral compression) and 15Fi-4(a)(3) (policies and procedures regarding multilateral compression).

3. Scope of Proposed Rule 15Fi-4—Bilateral Offset

As we previously noted, the Commission has preliminarily made the determination not to suggest a preference as to the use of any particular type of compression, or as to the type or identity of the party conducting the exercise and has, instead, proposed broad definitions of the terms “bilateral portfolio compression exercise” and “multilateral portfolio compression exercise.” In addition, the Commission recognizes that there may be other ways for market participants to reduce the size of their derivatives portfolios that may not be considered to be “portfolio compression exercises” for purposes of those two proposed definitions.

In light of those considerations, proposed Rule 15Fi-4(a)(1) would require each SBS Entity to establish, maintain, and follow written policies and procedures for terminating each “fully offsetting security-based swap” that it maintains with another SBS Entity in a timely fashion, when appropriate.⁷⁵ To the extent that an SBS

Entity transacts with a counterparty that is *not* an SBS Entity, the requirements of proposed Rule 15Fi-4(b) would be identical to those in proposed Rule 15Fi-4(a)(1), except that the required policies and procedures would only need to address engaging in bilateral offset when appropriate and to the extent requested by the counterparty. The Commission preliminarily believes that by not proposing prescriptive requirements as to the form of bilateral offset that would need to be reflected in an SBS Entity's policies and procedures, the proposed rule would allow the counterparties flexibility in the manner in which they reduce the size of their security-based swap portfolios in light of each counterparty's unique risks and operations.

In addition, the proposed rules regarding bilateral offset have been designed to reflect the Commission's understanding that firms may have legitimate business reasons for maintaining fully offsetting security-based swap transactions. As such, proposed Rules 15Fi-4(a)(1) and (b) would require a firm's policies and procedures to address the termination of fully offsetting security-based swaps only “when appropriate.”

Finally, for purposes of proposed Rules 15Fi-4(a)(1) and (b), the Commission would generally consider an SBS Entity to have terminated each fully offsetting security-based swap in a “timely fashion” so long as (1) termination of the offsetting security-based swaps occurs within a period that is reasonable in light of the circumstances of each particular transaction and (2) the relevant SBS Entity is otherwise in compliance with its policies and procedures regarding bilateral offset.

4. Application of Proposed Rule 15Fi-4 to Cleared Security-Based Swaps

Pursuant to proposed Rule 15Fi-4(c), the new requirements regarding portfolio compression would not apply to a “clearing transaction” which, pursuant to existing Rule 15Fi-1(c) under the Exchange Act, is defined as a security-based swap that has a clearing agency as a direct counterparty.⁷⁶ Notwithstanding this provision, the Commission recognizes that portfolio compression is not limited to uncleared

after the offset of payment obligations thereunder.” See proposed Rule 15Fi-1(h). For consistency with the rules applicable to Swap Entities, this definition is substantively identical to the CFTC's corresponding definition in 17 CFR 23.500(f), which we preliminarily believe is appropriately scoped and clear for purposes of proposed Rule 15Fi-4.

⁷⁶ See *supra* note 58 and accompanying text.

⁷³ See 17 CFR 23.503(a)(3)(ii).

⁷⁴ See 17 CFR 23.503(a)(2).

⁷⁵ The Commission also is proposing to amend Rule 15Fi-1 to add the term “fully offsetting security-based swaps,” which would be defined as “security-based swaps of equivalent terms where no net cash flow would be owed to either counterparty

swaps and that compression services may be offered either by a clearing agency itself or by a third-party vendor that works collaboratively with the clearing agency.⁷⁷ Although the risk-reducing benefits that could be realized through the compression of cleared security-based swaps, we preliminarily believe that the issue of whether and when compression should occur within a clearing agency is best addressed by the rules governing the clearing agency's risk management practices, as well as by the documentation governing the relationship between the clearing agency and its members.⁷⁸

5. Comments Requested

The Commission generally requests comments on all aspects of Proposed Rule 15Fi-4 (and any related definitions). In addition, the Commission requests comments on the following specific issues:

- Do commenters agree with the scope of the Commission's approach of proposing broad definitions of "bilateral portfolio compression exercise" and "multilateral portfolio compression exercise"? Why or why not?

- Should SBS Entities be required to have policies and procedures in place for terminating fully offsetting security-based swaps in a timely fashion? Why or why not? Do you agree with the proposed interpretation of the term "timely fashion" to mean that the relevant security-based swaps should be terminated within a period that is reasonable in light of the circumstances of each particular transaction (so long as the relevant SBS Entity is otherwise in compliance with its policies and procedures regarding bilateral offset)? Why or why not? Should the Commission instead specify a fixed period of time for the required termination of these security-based swaps? Why or why not?

- With respect to any Swap Entity that could potentially register with the Commission as an SBS Entity, would the portfolio compression protocols (or

any other applicable documentation) already in existence with respect to CFTC Rule 23.503 satisfy the requirements in proposed Rule 15Fi-4? Why or why not? Should proposed Rule 15Fi-4 be modified to account for the way that market participants have designed their existing protocols (or any other applicable documentation) to be compliant with the CFTC's rules? Why or why not? For the purposes of compliance with the proposed portfolio compression rules, should the Commission allow compliance with the CFTC's parallel requirements for some period of time to allow dual SEC-CFTC registrants to conform their existing portfolio compression protocols (or any other applicable documentation) following the adoption of proposed Rule 15Fi-4? If so, on what factors should that reliance be conditioned and how long of a compliance period should be provided? In the alternative, should the Commission delay compliance with, or establish phased compliance deadlines for, some or all of these requirements? Please explain the nature of any compliance challenges (including any additional documentation requirements), and the basis for any suggested compliance period.

- As previously noted, proposed Rule 15Fi-4 has been designed to be as consistent as possible with CFTC Rule 23.503, which imposes portfolio compression requirements on Swap Entities, in order to avoid requiring dual SEC-CFTC registrants to incur additional systems or compliance costs due to differences between the two agencies' approaches. To the extent that any such differences remain, should the Commission consider, for any firm dually-registered as both an SBS Entity and Swap Entity (regardless of whether such firm is also registered with the Commission as a broker-dealer or with the CFTC as a futures commission merchant), permitting such firm to comply with proposed Rule 15Fi-4 on an ongoing basis by complying with CFTC Rule 23.503, as if such rule applied to security-based swaps? If so, what conditions, if any, should be placed on such reliance?

- Do commenters agree with the proposed exception from the compression requirements in proposed Rule 15Fi-4 for clearing transactions? Why or why not? Because the definition of "clearing transactions" only includes transactions cleared at a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act, security-based swaps cleared at a foreign clearing agency that is not registered with the Commission would *not* be deemed to be "cleared"

for these purposes, and would therefore be subject to proposed Rule 15Fi-4. Should the Commission modify the scope of the exception for cleared security-based swaps, such as by including transactions that are cleared at a clearing agency that is not registered with the Commission pursuant to Section 17A of the Exchange Act, whether because of an applicable exemption from registration or because the Exchange Act does not cover the activities of the clearing? Why or why not?

- Proposed Rule 15Fi-4(b) requires each SBS Entity to establish, maintain, and follow written policies and procedures for periodically terminating fully offsetting security-based swaps and for engaging in bilateral or multilateral portfolio compression exercises with respect to security-based swaps in which its counterparty is an entity other than an SBS Entity, "when appropriate" and to the extent requested by any such counterparty. CFTC Rule 23.503(b) does not contain the "when appropriate" qualifier and provides only that a Swap Entity's policies and procedures address engaging in bilateral offset or compression exercises "to the extent requested" by a counterparty that is not a Swap Entity. Would the Commission's proposed approach create any practical difficulties for dual SEC-CFTC registrants? If so, what are they? Should the Commission instead strike the "when appropriate" qualifier in order to mirror the corresponding CFTC requirement? Why or why not? To the extent that the Commission were to follow the approach of CFTC Rule 23.503(b), should there be a reasonableness standard to address situations when a request by a non-SBS Entity counterparty to engage in bilateral offset or compression exercises would be not be reasonable, such as a situation when doing so could be detrimental to the SBS Entity? If so, under what conditions should an SBS Entity be able to refuse a request from a non-SBS Entity counterparty to engage in such activity pursuant to proposed Rule 15Fi-4(b)?

- What practices, if any, are currently being used (or are currently under consideration) by market participants with respect to the use of portfolio compression across asset classes? For example, could a compression exercise occur with respect to two or more counterparties maintaining portfolios of both single-name credit default swaps ("CDS") and index CDS? If so, should the Commission modify proposed Rule 15Fi-4, or provide related interpretive guidance to accommodate portfolio compression across asset classes?

⁷⁷ Notwithstanding the applicability of the requirements of proposed Rule 15Fi-4, the Commission reminds any third parties performing compression or offset services to keep in mind any potential requirements under other provisions of the securities laws. For example, the Commission has stated that the provision of tear-up and compression services for security-based swaps would qualify these participants as clearing agencies and therefore trigger the statutory requirement to register as clearing agencies pursuant to Section 17A of the Exchange Act, absent exemptive relief (which the Commission provided on a conditional temporary basis in July 2011). See Clearing Services Exemptive Order, 76 FR at 39964.

⁷⁸ The corresponding CFTC rule is 17 CFR 23.503(c).

• Should SBS dealers and major SBS participants be treated the same for purposes of the portfolio compression requirements in proposed Rule 15Fi-4? Why or why not?

D. Rule 15Fi-5 (Trading Relationship Documentation)

1. Overview of Trading Relationship Documentation

Section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBS Entities. Just as portfolio reconciliation is designed to allow counterparties to manage their internal risks by better ensuring agreement with respect to the terms of the transaction (and thereby avoiding complications at various points throughout the life of the transaction),⁷⁹ requiring each SBS Entity to document the terms of the trading relationship with each of its counterparties before executing a new security-based swap transaction should promote sound collateral and risk management practices by enhancing transparency and legal certainty regarding each party's rights and obligations under the transaction. This, in turn, should help to reduce counterparty credit risk and promote certainty regarding the agreed-upon valuation and other material terms of a security-based swap.⁸⁰ Having adequate written documentation prior to, or contemporaneously with, executing a security-based swap should also facilitate the ability of the counterparties to engage in portfolio reconciliation, as would be required under these proposed rules, in an efficient and cost-effective manner.

2. Scope of Proposed Rule 15Fi-5

In light of the important risk mitigating factors described above, the Commission is proposing Rule 15Fi-5, which establishes certain requirements for SBS Entities related to the use of written trading relationship documentation in connection with their security-based swap transactions.⁸¹ Specifically, proposed Rule 15Fi-5(a)(2) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably

designed to ensure that it executes written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap with any counterparty.⁸² The proposed rule would further require that the policies and procedures required thereunder be approved in writing by a senior officer of the SBS Entity, and that a record of the approval be retained.⁸³

Pursuant to proposed Rule 15Fi-5(b)(1), the required policies and procedures would require that the security-based swap trading relationship documentation be in writing. The policies and procedures would also require that the documentation include all terms governing the trading relationship between the SBS Entity and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations (including pursuant to Regulation SBSR), governing law, valuation, and dispute resolution.⁸⁴

For purposes of Rule 15Fi-5(b)(2), all trade acknowledgements and verifications of security-based swap

transactions required under Rule 15Fi-2 would be deemed to be security-based swap trading relationship documentation, as they often may contain one or more terms contemplated by the policies and procedures required by proposed Rule 15Fi-5. Further, the Commission understands that in some transactions, the parties may choose to document their trading relationship by using a stand-alone "long-form confirmation" that includes all of the terms governing the relationship. The proposed rule is not intended to interfere with this practice. Accordingly, we preliminarily believe that the use of a "long-form confirmation" would comply with proposed Rule 15Fi-5 so long as such document is: (1) In written form and includes all of the elements of the trading relationship required under the rule (whether by incorporating them by reference from a standard master agreement or by expressly restating them in the confirmation) and (2) executed prior to, or contemporaneously with, the execution of each relevant security-based swap.

The policies and procedures required by the proposed rule also would require that the security-based swap trading relationship documentation include credit support arrangements.⁸⁵ Such credit support would be required to contain, among other things and in accordance with applicable requirements under regulations adopted by the Commission or any prudential regulators,⁸⁶ and without limitation, the following:

- Initial and variation margin requirements, if any;
- types of assets that may be used as margin and asset valuation haircuts, if any;
- investment and re-hypothecation terms for assets used as margin for uncleared security-based swaps, if any; and
- custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with Section 3E(f) of the Exchange Act, if any.⁸⁷

As the Commission has previously explained, ensuring that uncleared OTC derivatives transactions are appropriately collateralized was one of the key elements of the Title VII reforms.⁸⁸ Accordingly, we preliminarily believe that policies and procedures requiring counterparties to

⁸² Among other exceptions discussed below in Section I.D.6, proposed Rule 15Fi-5 is applicable only to uncleared security-based swaps.

⁸³ See proposed Rule 15Fi-5(b)(2). For purposes of this requirement, the Commission preliminarily views the term "senior officer" as covering only the most senior executives in the organization, such as a firm's chief executive officer, chief financial officer, chief legal officer, chief compliance officer, president, or other person at a similar level. This approach is similar to how the Commission has previously interpreted the term in the context of other requirements applicable to SBS Entities. See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48968 n. 29 (Aug. 14, 2015) ("SBS Entity Registration Adopting Release"). By contrast, CFTC Rule 23.504 uses the term "senior management," which is not further defined in either CFTC Rules 23.500 or 23.504. We preliminarily view this difference as a clarification and do not believe that it represents a substantive difference between the two sets of rules, but below we solicit comment on this issue.

⁸⁴ We note that CFTC Rule 23.504 does not contain a comparable provision to the requirement in proposed Rule 15Fi-5(b)(1) that the trading relationship documentation address "applicable regulatory reporting obligations (including pursuant to Regulation SBSR)." The Commission is proposing this requirement not only because of our view that reporting arrangements should be clarified in advance, due to the importance of ensuring that the transaction is reported accurately and in a timely manner, but also because the inclusion of such provision could potentially help to address an issue related to how SDRs can verify the information that they receive, as discussed in detail in Section I.E below.

⁸⁵ See proposed Rule 15Fi-5(b)(3).

⁸⁶ See *supra* note 48.

⁸⁷ 15 U.S.C. 78c-5(f).

⁸⁸ See *supra* Section I.B.1.

⁷⁹ See *supra* Section I.B.1.

⁸⁰ See, e.g., Sylvie A. Durham, Terminating Derivatives Transactions: Risk Mitigation and Close-Out Netting § 8:1 (Nov. 2010) ("[L]egal contractual provisions are the foundation on which the rights and obligations of the parties are based, and sound collateral and risk management practices may be ineffective if the legal rights of the parties are not clearly set forth.").

⁸¹ The corresponding CFTC rule is 17 CFR 23.504. The structure of the CFTC rule, including the subsections, mirrors the structure of proposed Rule 15Fi-5.

clearly document the applicable processes and requirements for calculating and exchanging margin in connection with a security-based swap transaction is an important step in achieving this broader regulatory objective.

3. Proposed Rule 15Fi-5(b)(4): Documenting Valuation Methodologies

As mentioned throughout this release, ensuring that security-based swaps are accurately valued throughout the duration of a contract should play an important role in protecting the integrity of the OTC derivatives market, both at the level of an individual participant and systemically across the broader financial market.⁸⁹ Accordingly, proposed Rule 15Fi-5(b)(4) would require that the applicable policies and procedures provide that the relevant swap trading relationship documentation between certain types of counterparties include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each security-based swap at any time from execution to the termination, maturity, or expiration of such security-based swap for the purposes of complying with the margin requirements under Section 15F(e) of the Exchange Act (and applicable regulations),⁹⁰ and the risk management requirements under Section 15F(j) of the Exchange Act (and applicable regulations).⁹¹ To the maximum extent practicable, such valuations would need to be based on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.⁹²

The requirements in proposed Rule 15Fi-5(b)(4) regarding valuation methodology would apply to security-based swap trading relationship documentation entered into between: (1) Two SBS Entities; (2) an SBS Entity and a “financial counterparty;” and (3) an SBS Entity and any other counterparty, if requested by such counterparty. Accordingly, we are also proposing to

⁸⁹ See *id.*

⁹⁰ See 15 U.S.C. 78o-10(e). For the avoidance of doubt, the requirements in proposed Rule 15Fi-5(b)(4) are intended to facilitate agreement between an SBS Entity and its counterparty as to how they will determine the value of a security-based swap in order to, among other things, comply with the margin requirements promulgated by either the Commission or, with respect to an SBS Entity that is a bank, the applicable prudential regulator. These requirements are not intended in any way to supersede those underlying margin requirements.

⁹¹ See 15 U.S.C. 78o-10(f).

⁹² See proposed Rule 15Fi-5(b)(4)(i).

amend Rule 15Fi-1 to add a definition of “financial counterparty,” which would include any counterparty that is not an SBS Entity *and* that is one of the following:

- A swap dealer;
- a major swap participant;
- a commodity pool as defined in Section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));
- a private fund as defined in Section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a));
- an employee benefit plan as defined in paragraphs (3) and (32) of Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and
- a person predominantly engaged in activities that are in the business of banking or, in activities that are financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843k).⁹³

Further, proposed Rule 15Fi-5(b)(4)(ii) has been designed to help ensure that the required valuation documentation between SBS Entities and their counterparties contains sufficient guidance and information in the event of a problem with determining the value of a security-based swap. Specifically, the documentation required by the applicable policies and procedures must include *either*: (1) Alternative methods for determining the value of the security-based swap for the purposes of complying with proposed Rule 15Fi-5(b)(4) in the event of the unavailability or other failure of any input required to value the security-based swap for such purposes; or (2) a valuation dispute resolution process by which the value of the security-based swap shall be determined for the purposes of complying with the rule.⁹⁴

To the extent that the prescribed valuation documentation needs to be updated, revised, or otherwise modified,

⁹³ See proposed Rule 15Fi-1(g). The corresponding definition in CFTC Rule 23.500(e) is referred to as a “financial entity.” We replaced the word “entity” with “counterparty” to avoid any confusion due to the fact that there are other definitions of “financial entity” within the Exchange Act and its implementing regulations. For example, term “financial entity” is used in Section 3C(g) of the Exchange Act for purposes of the statutory exception to the mandatory clearing requirement in Title VII. See 15 U.S.C. 78c-3(g)(3). Similarly, there is a definition of “financial entity” in Rule 3a67-6 under the Exchange Act, which is used for one of the tests for determining a person’s status under the definition of “major security-based swap participant” in Section 3(a)(67) of the Exchange Act. See 15 U.S.C. 78. Other than the different titles, we do not believe that there are any substantive differences between the CFTC’s definition of “financial entity” and the proposed definition of “financial counterparty.”

⁹⁴ See proposed Rule 15Fi-5(b)(4)(ii).

proposed Rule 15Fi-5(b)(4)(iv) provides that the parties may agree on changes or procedures for modifying or amending such documentation at any time.⁹⁵ Finally, in recognition of the fact that valuation data and methodologies often include, or may be based on, private information, proposed Rule 15Fi-5(b)(4)(iii) makes clear that an SBS Entity is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a security-based swap.

4. Proposed Rule 15Fi-5(b)(5) and (6): Other Disclosure Requirements

Proposed Rule 15Fi-5 also would require that the policies and procedures governing the applicable trading relationship documentation require an SBS Entity and its counterparty to disclose to each other certain information regarding their legal and bankruptcy status, and to include a statement regarding the status of a security-based swap if accepted for clearing by a CCP. The first requirement relates to whether the SBS Entity or its counterparty is subject to a particular legal regime in the event of its failure, such as FDIC receivership for banks or orderly liquidation for certain financial companies that meet the requirements set forth in Title II of the Dodd-Frank Act.⁹⁶ As background, Title II of the Dodd-Frank Act provides for an alternative insolvency regime for the “orderly liquidation” of large financial companies,⁹⁷ including broker-dealers,

⁹⁵ The text of CFTC Rule 23.504(b)(4)(iv), which is the corresponding subsection under CFTC rules, provides that “[t]he parties may agree on changes or procedures for modifying or amending the documentation required by this paragraph at any time.” Proposed Rule 15Fi-5(b)(4)(iv) does not contain the phrase “required by this paragraph.” We view this to be solely a technical change and do not intend for it to represent a substantive deviation from the corresponding CFTC rule. Rather, the difference is intended to avoid any suggestion that the parties could amend the underlying requirements contained in proposed Rule 15Fi-5(b)(4).

⁹⁶ See 12 U.S.C. 5382; 12 U.S.C. 5383.

⁹⁷ The term “financial company” is defined in 12 U.S.C. 5381(a)(11) to include any company (as defined in 12 U.S.C. 5381(a)(5)) that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company (as defined in 12 U.S.C. 1841(a));

(ii) a nonbank financial company supervised by the Federal Reserve Board;

(iii) any company that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of 12 U.S.C. 1843(k) (other than a company described in clause (i) or (ii)); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Federal Reserve Board has determined are financial in nature or incidental

that meet specified criteria (each a “covered financial company”) as set forth in Title II of the Dodd-Frank Act.⁹⁸ If the covered financial company is (1) a broker or dealer and (2) a member of the Securities Investor Protection Corporation (“SIPC”), such “covered broker or dealer” would be placed into an orderly liquidation proceeding with the FDIC appointed as receiver.⁹⁹ Because this orderly liquidation process, which was modeled on the receivership process used for failed banks, is different from the liquidation regimes established under the Securities Investor Protection Act of 1970¹⁰⁰ or by the U.S. Bankruptcy Code,¹⁰¹ the Commission preliminarily believes it to be appropriate to require counterparties to a security-based swap transaction to disclose to each other whether this alternative regime may potentially apply in the event of an insolvency.

Accordingly, proposed Rule 15Fi–5(b)(5) would require that each SBS Entity’s policies and procedures require that the security-based swap trading relationship documentation contain a statement as to whether it or its counterparty is an insured depository institution or financial company. Further, the documentation also would need to contain a statement that the orderly liquidation provisions of the Dodd-Frank Act and the Federal Deposit Insurance Act¹⁰² may limit the rights of

thereto for purposes of 12 U.S.C. 1843(k) (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*), a governmental entity, or a regulated entity, as defined under 12 U.S.C. 4502(20).

⁹⁸ Section 203 of the Dodd-Frank Act sets forth the process for designating a financial company as a “covered financial company.” In the case of a broker-dealer, or when a financial company’s largest U.S. subsidiary is a broker-dealer, Section 203(a)(1)(B) provides that the Federal Reserve Board and the Commission (in each case subject to the approval of a two-thirds majority of each agency’s members), in consultation with the FDIC, may, either on their own initiative or at the request of the Secretary of the U.S. Treasury (“Secretary”), issue a written orderly liquidation recommendation to the Secretary. See 12 U.S.C. 5383(a). Section 203(b) requires the Secretary (after consultation with the President) to take action on the recommendation upon an affirmative determination that, among other things, the failure of a financial company would have serious adverse effects on financial stability in the United States and that taking action under the orderly liquidation authority with respect to that company would avoid or mitigate such adverse effects. See 12 U.S.C. 5383(b).

⁹⁹ See 12 U.S.C. 5384. Section 205(a) of the Dodd-Frank Act requires the FDIC, as the appointed receiver for any covered broker or dealer, to appoint SIPC as trustee for the liquidation. See 12 U.S.C. 5385(a).

¹⁰⁰ 15 U.S.C. 78aaa *et seq.*

¹⁰¹ 11 U.S.C. 101 *et seq.*

¹⁰² 12 U.S.C. 1811 *et seq.*

the parties under their trading relationship documentation should either party be deemed a “covered financial company” or is otherwise subject to having the FDIC appointed as a receiver. The documentation would further be required to state that such limitations relate to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and of certain rights of the FDIC to transfer security-based swaps of the covered party. Finally, the policies and procedures would require that the trading relationship documentation contain an agreement between the SBS Entity and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.¹⁰³

Second, the policies and procedures required pursuant to proposed Rule 15Fi–5(b)(6) would require the security-based swap trading relationship documentation of each SBS Entity disclose certain information regarding the status of a security-based swap accepted for clearing by a clearing agency. Specifically, such documentation would need to contain a notice that, upon acceptance of a security-based swap by a clearing agency:

¹⁰³ Specifically, proposed Rule 15Fi–5(b)(5) would require that an SBS Entity’s policies and procedures require that the applicable security-based swap trading relationship documentation contain:

(A) A statement of whether the SBS Entity is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));

(B) A statement of whether the counterparty is an insured depository institution or financial company;

(C) A statement that in the event either the SBS Entity or its counterparty becomes a covered financial company (as defined in 12 U.S.C. 5381(a)(8)) or is an insured depository institution for which the FDIC has been appointed as a receiver (the “covered party”), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(D) An agreement between the SBS Entity and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

- The original security-based swap is extinguished;

- The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

- All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency’s rules.

The Commission preliminarily believes that this disclosure should provide important information to counterparties regarding the effects of clearing a trade at a clearing agency and clarify the status of the contract following its acceptance and novation at the clearing agency.

5. Proposed Rule 15Fi–5(c): Audit of Security-Based Swap Trading Relationship Documentation

Proposed Rule 15Fi–5(c) would require each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by the rule. The proposal also would require that a record of the results of each audit be retained for a period of three years after the conclusion of the audit.¹⁰⁴ The Commission preliminarily believes that requiring periodic audits of a firm’s security-based swap trading relationship documentation is consistent with sound risk mitigation practices and is designed to reduce the prevalence of discrepancies during the course of these transactions. This proposed requirement differs slightly from CFTC Rule 23.504(c), which references an independent “internal or external” auditor.¹⁰⁵

¹⁰⁴ The three year holding period for these records is contained in the applicable recordkeeping, reporting, and notification requirements for SBS Entities, as opposed to in proposed Rule 15Fi–5(c) itself.

¹⁰⁵ See 17 CFR 23.504(c). In the Commission’s experience overseeing accounting and auditing standards in the context of certain disclosure requirements under the federal securities laws, an internal auditor typically reports to the management of the applicable entity, which would be inconsistent with the Commission’s auditor independence rules. See Rule 2–01(c)(2) of Regulation S–X (Employment Relationships). 17 CFR 210.2–01(c). At the same time, we are not foreclosing the possibility that there could be alternative structures to the typical “internal” auditor employment relationship that could, if structured properly, not be inconsistent with the Commission’s auditor independence rules and request comment below identifying and describing such potential structures.

6. Exceptions to the Trading Relationship Documentation Requirements

Proposed Rule 15Fi-5(a)(1) would establish three different exceptions from the basic requirement that each SBS Entity establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap with any counterparty. First, proposed Rule 15Fi-5(a)(1)(i) would provide an exception for security-based swaps executed prior to the date on which an SBS Entity is required to be in compliance with the documentation rule. Although the Commission recognizes the significant risk mitigation benefits associated with ensuring that all transactions are supported by comprehensive and accurate documentation, we also understand that it may be impractical to require SBS Entities to have policies and procedures to bring existing transactions into compliance with these proposed rules, particularly when weighing any potential benefits of doing so against the potential costs. Accordingly, we preliminarily believe that those transactions should be excepted from the proposed documentation requirements.¹⁰⁶

To the extent that an SBS Entity maintains an existing security-based swap portfolio with a counterparty that pre-dates the compliance date, proposed Rule 15Fi-5(a)(1)(i) would provide an exception from the documentation requirements only with respect to those *existing* transactions. This means that the SBS Entity would not be in violation of Rule 15Fi-5 solely as a result of having policies and procedures that do not require such SBS Entity to have executed written security-based swap trading relationship documentation with any counterparty with respect to those existing transactions, or if the existing documentation that it maintains with the counterparty does not otherwise comply with the requirements

¹⁰⁶ As discussed in detail in Section I.F.1 of this release, the Commission also is proposing amendments to Rule 17a-4 and to proposed Rule 18a-6 that would, among other things, require SBS Entities to retain all security-based swap trading relationship documentation with counterparties required to be created under proposed Rule 15Fi-5. Because security-based swaps executed prior to the date on which an SBS Entity is required to be in compliance with proposed Rule 15Fi-5 would be exempt from the underlying documentation requirement, any trading relationship documentation voluntarily entered into in respect of those transactions would not be deemed to have been created pursuant to proposed Rule 15Fi-5.

of the rule. However, if the SBS Entity enters into *new* security-based swap transactions with the counterparty, the exception would not apply to those new trades, even if trading relationship documentation already existed. Under those circumstances, the SBS Entity's policies and procedures would be need to be reasonably designed to ensure that the existing documentation complies with the proposed rule before using it as the basis to enter into any new security-based swaps with that counterparty.

Second, proposed Rule 15Fi-5(a)(1)(ii) would provide an exception for any "clearing transaction" which, pursuant to existing Rule 15Fi-1(c), is defined as a security-based swap that has a clearing agency as a direct counterparty.¹⁰⁷ This exception is intended to recognize the fact that once a security-based swap is cleared, the transaction is governed primarily by the terms of the agreements in effect between the clearing member and the clearing agency (as well as between the clearing member and its customer, if applicable).

Finally, proposed Rule 15Fi-5(a)(1)(iii) would provide an exception for security-based swaps executed anonymously on a national securities exchange or a security-based swap execution facility ("SBSEF"), provided that:

- Such security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency;
- All terms of such security-based swaps conform to the rules of the clearing agency; and
- Upon acceptance of such security-based swap by the clearing agency: (1) The original security-based swap is extinguished; (2) the original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and (3) all terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules.

The exception in proposed Rule 15Fi-5(a)(1)(iii) is intended to recognize the fact that the documentation requirements may be largely impossible to comply with in the context of cleared anonymous transactions by virtue of the fact that, by definition, the parties to these transactions would not know the identity their counterparties. Therefore, trading relationship documentation with any such counterparty would be unnecessary and impractical.

The exception provided for in proposed Rule 15Fi-5(a)(1)(iii) is

¹⁰⁷ See *supra* note 58 and accompanying text.

limited—and therefore distinguishable from the exception for cleared security-based swap transactions—in one important respect to account for instances where a transaction is not accepted for clearing following its submission. For example, an SBS Entity may enter into a security-based swap transaction on an anonymous basis on a national securities exchange or an SBSEF, fully intending for the transaction to be submitted to, and cleared by, a clearing agency. In some cases, the transaction may be rejected by the clearing agency for reasons which the SBS Entity did not know (or had no reasonable basis to know) prior to its submission, such as possible operational or clerical errors or if one of the clearing members unintentionally exceeded its clearing limits. If a bilateral transaction continues to exist between the two counterparties (who would no longer be unknown to each other), written trading relationship documentation governing that transaction might not exist between them.

Under those circumstances, the Commission preliminarily believes that the objectives of Rule 15Fi-5 would not be satisfied if the SBS Entity and its counterparty did not ultimately have written agreement on the terms of the remaining security-based swap transaction. At the same time, however, because the transaction was initially entered into on an anonymous basis, the two sides might need additional time to agree to the terms of the trading relationship documentation, particularly if they previously had not engaged in any other transactions. Accordingly, the Commission is proposing that if an SBS Entity that is relying on the exception in proposed Rule 15Fi-5(a)(1)(iii) subsequently receives notice that the relevant security-based swap transaction has not been accepted for clearing by a clearing agency, the applicable policies and procedures would need to require that the SBS Entity be in compliance with the requirements of proposed Rule 15Fi-5 in all respects promptly after receipt of such notice.¹⁰⁸

The Commission notes that whether a contract that has not been accepted for

¹⁰⁸ The provisions in proposed Rule 15Fi-5(a)(iii) to account for cleared anonymous transactions that are submitted for clearing, but ultimately not accepted, are not included in CFTC Rule 23.504. We have included this provision to account for situations when an SBS Entity could be otherwise deemed to be not in compliance with proposed Rule 15Fi-5 due to a transaction being rejected for clearing for reasons which the SBS Entity did not know (or have a reasonable basis to know) prior to when the transaction was submitted to the clearing agency.

clearing by a clearing agency continues to exist may depend on the rules of the particular SBSEF, national securities exchange, or clearing agency, or the agreement of the counterparties. If the end result is that a security-based swap continues to exist despite being rejected by the clearing agency, then the policies and procedures would need to require that the SBS Entity be in compliance with the requirements of Rule 15Fi-5 with respect to that transaction. If the rejection from clearing results in a termination or voiding of the original security-based swap, then there is no security-based swap for which it is necessary to comply with Rule 15Fi-5.

7. Comments Requested

The Commission generally requests comments on all aspects of Proposed Rule 15Fi-5 (and any related definitions). In addition, the Commission requests comments on the following specific issues:

- Do commenters agree with the scope of the proposed exception from the trading relationship documentation requirements in proposed Rule 15Fi-5 for clearing transactions? Why or why not? Because the definition of “clearing transactions” only includes transactions cleared at a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act, security-based swaps cleared at a foreign clearing agency that is not registered with the Commission would *not* be deemed to be “cleared” for these purposes, and would therefore be subject to proposed Rule 15Fi-5. Should the Commission modify the scope of the exception for cleared security-based swaps, such as by including transactions that are cleared at a clearing agency that is not registered with the Commission pursuant to Section 17A of the Exchange Act, whether because of an applicable exemption from registration or because Exchange Act does not cover the activities of the clearing agency? Why or why not?

- Do commenters agree with the proposed exception from the trading relationship documentation requirements for security-based swaps executed anonymously on a national securities exchange or an SBSEF? Is it sufficiently comprehensive? Why or why not? The proposed exception also provides that if a security-based swap executed anonymously on a platform is subsequently rejected for clearing, the SBS Entity would then be required to come into compliance with the documentation requirements “promptly” after receipt of the notice of rejection. Do you agree with this

approach? Why or why not? Should the Commission define or provide an interpretation of the word “promptly” for these purposes or, as an alternative, specify a fixed period of time in the rule text in which SBS Entities would be required to comply with proposed Rule 15Fi-5? Why or why not and, if so, how much time should be provided?

- Are there any current industry practices that relate to how counterparties to swaps and security-based swaps treat transactions executed anonymously on a trading platform, but subsequently rejected for clearing? If any such practices exist, please describe them, including with regard to the length of time that it typically takes to document these transactions, if they remain in effect.

- With respect to any Swap Entity that could potentially register with the Commission as an SBS Entity, would the documentation protocols (or any other applicable documentation) already in existence with respect to CFTC Rule 23.504 satisfy the requirements in proposed Rule 15Fi-5? Why or why not? Should proposed Rule 15Fi-5 be modified to account for the way that market participants have designed their existing protocols (or any other applicable documentation) to be compliant with the CFTC’s rules? Why or why not? For the purposes of compliance with the proposed documentation rules, should the Commission allow compliance with the CFTC’s parallel documentation rules for some period of time to allow dual SEC-CFTC registrants to conform their existing documentation protocols (or any other applicable documentation) following the adoption of proposed Rule 15Fi-5? If so, on what factors should that reliance be conditioned and how long of a compliance period should be provided? In the alternative, should the Commission delay compliance with, or establish phased compliance deadlines for, some or all of these requirements? Please explain the nature of any compliance challenges (including any additional documentation requirements), and the basis for any suggested compliance period.

- As previously noted, proposed Rule 15Fi-5 has been designed to be as consistent as possible with CFTC Rule 23.504, which imposes trading relationship documentation requirements on Swap Entities, in order to avoid requiring dual SEC-CFTC registrants to incur additional systems or compliance costs due to differences between the two agencies’ approaches. To the extent that any such differences remain, should the Commission consider, for any firm dually-registered

as both an SBS Entity and Swap Entity (regardless of whether such firm is also registered with the Commission as a broker-dealer or with the CFTC as a futures commission merchant), permitting such firm to comply with proposed Rule 15Fi-5 on an ongoing basis by complying with CFTC Rule 23.504, as if such rule applied to security-based swaps? If so, what conditions, if any, should be placed on such reliance?

- In addition to the exceptions set forth in the proposed rule, are there other types of security-based swaps that should not be subject to the underlying trading relationship documentation requirements?

- Should the Commission require that the policies and procedures governing the required written security-based swap trading relationship documentation be approved by a senior officer of the SBS Entity, as is currently contemplated pursuant to proposed Rule 15Fi-5? Why or why not? As an alternative to requiring action by a senior officer, should such approval come instead from the governing body of the SBS Entity? Why or why not? As an additional alternative, should the Commission consider requiring approval of those policies and procedures by someone below the senior officer level? If so, who within an SBS Entity should approve them?

- For purposes of the requirement that a senior officer approve the policies and procedures required by proposed Rule 15Fi-5, the Commission has preliminarily interpreted the term “senior officer” as covering only the most senior executives in the organization, such as a firm’s chief executive officer, chief financial officer, chief legal officer, chief compliance officer, president, or other person at a similar level. Do commenters agree with such interpretation? Why or why not? Does the proposed interpretation create any differences with respect to the manner in which Swap Entities are required to comply with CFTC Rule 23.504(a)(2), which uses the term “senior management”? Should the explanation included in the Commission’s proposed interpretation instead be included in the rule text?

- Proposed Rule 15Fi-5 does not contain a comprehensive list of all of the terms that should be addressed in the required security-based swap trading relationship documentation. Rather, it provides that the documentation must include “all terms governing the trading relationship” between the SBS Entity and its counterparty and also contains a non-exclusive list of terms that must be

included. Do commenters agree with that approach? Why or why not? Should the Commission consider modifying the list of terms specifically identified in proposed Rule 15Fi-5(b)(1)?

- Should the Commission provide any additional specificity and/or guidance as it relates to one or more of the terms identified in proposed Rule 15Fi-5(b)(1) as required to be included in the trading relationship documentation? For example, should the rule specify the types of payment obligation terms that should be addressed in the documentation? Are there any particular details regarding potential events of default or termination events that should be specified in the documentation? Should the information requirements regarding the terms of the credit support arrangements between the two parties be modified in any way? In each case, why or why not and what additional details or guidance should be provided?

- Proposed Rule 15Fi-5(b)(1) requires that the security-based swap trading relationship documentation that SBS Entities execute with the counterparties include terms addressing dispute resolution. Should the Commission provide any additional specificity with respect to this proposed requirement, including by identifying what particular aspects of the dispute resolution process should be addressed in the documentation? For example, should the documentation include specific requirements regarding the methods for identifying, recording, and monitoring disputes? Should the terms governing dispute resolution identify specific time periods applicable to the process? Are there particular aspects regarding communications between the counterparties that should be specified in connection with the terms related to dispute resolution, such as the method for providing notice of a potential or actual dispute? In each case, why or why not, and what additional details or guidance should be provided?

- Proposed Rule 15Fi-5(b)(4) would require SBS Entities to include in their security-based swap trading relationship documentation with certain counterparties written agreement on the terms for valuing security-based swaps for the purposes of complying with the margin and risk management requirements. Do you agree with the scope of that requirement? Why or why not? Should these requirements apply to an SBS Entity's transactions with all counterparties, including non-financial counterparties, without regard to whether they are requested? Why or why not? Is there any additional information that should be included in

this requirement, or should any of the proposed requirements be modified or deleted? Do the provisions related to valuation discrepancies provide a sufficient basis for helping to ensure that disputes related to the value of a security-based swap are resolved in as efficient a manner as possible, or should any changes be made to these requirements? Should the requirements regarding valuation be modified in any way to account for the use of internal and/or proprietary inputs and models? In each case, why or why not, and how and why should the proposed rule be modified?

- Are the protections in the proposed rule regarding the treatment of confidential, proprietary information in connection with the required valuation agreement sufficient to meet the needs of both the party providing the information and the party receiving it? If not, how should the proposal be revised to address any such concerns?

- In addition to the terms governing the valuation agreement in proposed Rule 15Fi-5(b)(4), are there any other requirements that should be limited to, or modified for, certain types of counterparties (e.g., financial counterparties)? If so, which ones, and what particular requirements should apply?

- Do the disclosure requirements in paragraphs (5) and (6) of proposed Rule 15Fi-5(b), as they relate to the "insured depository institution" or "financial company" status of the SBS Entity or its counterparty and to the status of a security-based swap accepted for clearing, respectively, provide useful and relevant information to counterparties to security-based swaps? Why or why not? Should any other disclosure requirements be modified or deleted? If so, which ones and how? Should any additional disclosure requirements be added to the proposed rule? If so, what should be added and why?

- Do commenters agree with the scope of the proposed definition of "financial counterparty" in proposed Rule 15Fi-1(g), which is used for determining when the required security-based swap trading relationship documentation would need to include the valuation methodology set forth in proposed Rule 15Fi-5(b)(4)? Should that definition be expanded to include other types of financial entities, such as SEC-registered broker-dealers, investment companies, or investment advisers? If so, which types of entities should be added to the definition and why?

- Do commenters agree with the proposed requirements related to the performance of periodic audits of the

SBS Entity's security-based swap relationship documentation, as set forth in proposed Rule 15Fi-5(c)? Why or why not? If not, how should they be clarified? Should the Commission provide any additional specificity regarding what constitutes "independence" for these purposes? If so, how should that standard be measured and evaluated? For example, the Commission has extensive experience with respect to determining what constitutes "independence" in the context of accountants that audit and review financial statements and prepare attestation reports filed with the Commission, including in connection with rules adopted pursuant to Title II of the Sarbanes-Oxley Act of 2002. Should the Commission consider leveraging particular aspects of that experience in connection with refining the requirements in proposed Rule 15Fi-5(c)? If so, please explain.

- Are there any circumstances under which an internal auditor could be considered to be "independent" for purposes of proposed Rule 15Fi-5(c)? If so, please explain. If not, should the Commission consider eliminating the requirement that the auditor be independent in order to allow for internal audits of the SBS Entity's security-based swap relationship documentation? If so, are there particular conditions that should be included in the requirement in order to maintain the integrity of the audit process?

- Should the person performing the audit of the SBS Entity's security-based swap relationship documentation pursuant to proposed Rule 15Fi-5(c) be subject to any qualification requirements, such as the requirement to be registered with the Public Company Accounting Oversight Board ("PCAOB")? If so, which qualifications should be required and why? If not, should proposed Rule 15Fi-5(c) be clarified to state explicitly that PCAOB registration is not a condition of the rule?

- Should SBS dealers and major SBS participants be treated the same for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi-5? Why or why not?

E. Verification of Transaction Data by SDRs

In light of certain of the rules we are proposing today, the Commission believes it to be an appropriate time to revisit and request comment on an issue previously identified in connection with the rules applicable to the registration and ongoing regulation of SDRs. As background, Section 13(n) of the

Exchange Act establishes a regulatory regime for the operation of and governance of SDRs.¹⁰⁹ Among other things, Section 13(n)(5)(B) requires each registered SDR to “confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.”¹¹⁰ On February 15, 2015, the Commission adopted Rules 13n–1 to 13n–12, which govern the SDR registration process, duties, and core principles.¹¹¹ Among other core principles governing the registration and ongoing obligations of SDRs, Rule 13n–4(b)(3) implements the statutory requirement set forth in Section 13(n)(5)(B) by requiring SDRs to confirm, as prescribed in Rule 13n–5, with both counterparties to the security-based swap the accuracy of the data that was submitted.¹¹²

As part of the process of implementing the SDR rules, at least one former SDR applicant expressed reservations and concerns about the burdens of requiring SDRs to reach out to counterparties who are not its members to verify accuracy of the data.¹¹³ The Commission understands these concerns and the difficulty SDRs could face when attempting to contact counterparties to a security-based swap transaction with whom the SDR has no existing relationship. At the same time, however, the Commission also recognizes the importance of ensuring that the security-based swap data reported to an SDR is complete and accurate.

¹⁰⁹ Section 3(a)(75) of the Exchange Act defines the term “security-based swap data repository” to mean “any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.” 15 U.S.C. 78c(a)(75).

¹¹⁰ See 15 U.S.C. 78m(n)(5).

¹¹¹ See Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14437 (Mar. 19, 2015) (“SDR Adopting Release”).

¹¹² See 17 CFR 240.13n–4(b)(3).

¹¹³ See, e.g., Letter from Michael C. Bodson, President and Chief Executive Officer, The Depository Trust & Clearing Corporation, and Larry E. Thompson, Chairman, DTCC Data Repository (U.S.) LLC (“DDR”), Managing Director and Vice Chairman, The Depository Trust & Clearing Corporation, dated Sept. 22, 2017, regarding DDR’s application for registration as an SDR (withdrawn on Mar. 27, 2018), available at: <https://www.sec.gov/comments/sbsdr-2016-02/sbsdr201602-2590214-161092.pdf> (noting the difficulty an SDR faces with respect to outreach to the non-reporting side of a security-based swap when that non-reporting counterparty is not a member of an SDR and proposing that Section 13(n)(5)(B) and corresponding Rule 13n–4(b)(3) be interpreted as requiring SDRs to confirm the accuracy of the security-based swap solely with counterparties who are its members).

Accordingly, the Commission preliminarily believes that certain provisions in proposed Rules 15Fi–3 and 15Fi–5, if adopted and taken together, could be relevant to SDRs in seeking to meet their obligations under Section 13(n)(5)(B) and Rule 13n–4(b)(3). As we explained in connection with adopting the SDR rules, SDRs may be able to reasonably rely on certain third parties to address the accuracy of the transaction data.¹¹⁴ For example, the Commission previously stated that if an SDR develops reasonable policies and procedures that rely on confirmations completed by another entity, such as a third-party confirmation provider, as long as such reliance is reasonable the SDR could use such confirmation to fulfill its obligations under certain SDR rules.¹¹⁵ Because the two relevant provisions that we are proposing today generally relate to the obligation of SBS Entities to take certain steps in the reconciliation and documentation processes related specifically to the reporting of the relevant security-based swap data to an SDR, including by clarifying the reporting obligations of the counterparties, the Commission believes that, like the previous example, these measures, taken together, could provide an SDR with a set of factors to assess the reasonableness of relying on an SBS Entity’s ability to independently provide the definitive report of a given security-based swap position, thereby providing a basis for the SDR to satisfy its statutory and regulatory obligations to verify the accuracy of the reported data when the SBS Entity’s counterparty is not a member of the SDR. The Commission requests comment on whether this preliminary analysis is accurate.

1. Reconciliation of Terms Submitted to an SDR

As described above in Section I.B.2, the definition of “material terms” in proposed Rule 15Fi–1(i), which identifies the information that SBS Entities would be required to reconcile with their counterparties, differs based on whether a security-based swap transaction had previously been included in a security-based swap portfolio for purposes of the portfolio reconciliation requirements in proposed Rule 15Fi–3. With respect to any security-based swap that has not yet been reconciled as part of, a security-based swap portfolio, “material terms” would be defined to mean each term that is required to be reported to a registered SDR under Rule 901 under

¹¹⁴ Cf. SDR Adopting Release, 80 FR at 14491.

¹¹⁵ See *id.*

the Exchange Act.¹¹⁶ With respect to all other security-based swaps within a security-based swap portfolio, the definition of “material terms” would exclude any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

As we also previously noted in Section I.B.2, the Commission preliminarily believes that there are potential benefits, both to SBS Entities and potentially to the security-based swap market as a whole, of requiring firms to initially reconcile all of the information required to be reported to an SDR. Specifically, doing so helps to ensure that the data reported to an SDR, and ultimately disseminated to the public, is accurate and complete. Section 13(n)(5)(B) of the Exchange Act and Rule 13n–4(b)(3) are both intended to accomplish the same objective of transparency regarding complete and accurate security-based swap data. Accordingly, like the previous example involving the third-party confirmation process, it may be appropriate to allow an SDR to meet its obligations by reasonably relying on an SBS Entity. Such reliance could be based, at least in part, on that fact that the SBS Entity would be subject to the portfolio reconciliation requirements in proposed Rule 15Fi–3 using the proposed definition of “material terms” in Rule 15Fi–1(i), were it to be adopted, to initially reconcile all of the terms of a transaction required to be reported to an SDR or the Commission pursuant to Rule 901, particularly in cases when the SBS Entity’s counterparty is not onboarded to the SDR.¹¹⁷ The Commission seeks comment on whether this preliminary analysis is accurate.

2. Documentation of Regulatory Reporting Obligations

As discussed above in Section I.D, proposed Rule 15Fi–5 would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written security-

¹¹⁶ See proposed Rule 15Fi–1(i)(1) (referencing 17 CFR 242.901).

¹¹⁷ The Commission also notes that Rule 905(a) of Regulation SBSR, which was adopted in 2015, generally imposes a duty to correct on any counterparty to a security-based swap (or any other person having a duty to report the security-based swap) that discovers an error in the information reported with respect to that security-based swap. See 17 CFR 242.905(a). Accordingly, if any discrepancies are identified in the course of satisfying the portfolio reconciliation requirements contained in proposed Rule 15Fi–3 that resulted in incorrect information having been reported to an SDR, then the SBS Entity would be required to follow the procedures set forth in Rule 905(a) to correct any erroneous information with the SDR.

based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap with any counterparty. Paragraph (b)(1) of that rule requires that the trading relationship documentation be in writing and also sets forth the minimum set of items that must be addressed by the documentation including, among other things, the allocation of any applicable regulatory reporting obligations (including pursuant to Regulation SBSR).¹¹⁸

Rule 901(a) of Regulation SBSR establishes a “reporting hierarchy” that specifies which counterparty to a security-based swap has the duty to report the transaction. Where possible, the rule assigns the reporting duty to the side that is registered with the Commission as an SBS Entity. Thus, if only one of the counterparties to a security-based swap transaction is an SBS Entity, then such SBS Entity will be the reporting side. In addition, if one counterparty to a security-based swap transaction is an SBS dealer and the other is a major SBS participant, the SBS dealer will be the reporting side. However, if both counterparties to a security-based swap transaction are SBS dealers (or both are major SBS participants), the sides are required to select the reporting side. The selection of the reporting side is an example of the type of “applicable reporting obligation” that proposed Rule 15Fi-5(b)(1) would cover.

Accordingly, the Commission preliminarily believes that requiring SBS Entities to address any applicable regulatory reporting obligations in the written trading relationship documentation that it executes with their counterparties also could be relevant to SDRs in seeking to meet their obligations under Section 13(n)(5)(B) and Rule 13n-4(b)(3). For example, to the extent that only one counterparty to a security-based swap is an SBS Entity, the trading relationship documentation could be used to memorialize the fact that the SBS Entity is the reporting party for purposes of Rule 901(a), and that such SBS Entity will be responsible for verifying the accuracy of each security-based swap transaction with the SDR.

3. Comments Requested

The Commission generally requests comments on the issues described above. In addition, the Commission requests comments on the following specific issues:

- Do you agree with the analysis described above, particularly as to how parts of proposed Rules 15Fi-3 (including the definition of “material terms” in proposed Rule 15Fi-1(i)) and 15Fi-5 could help address the concerns raised by former SDR applicants with respect to their obligations, pursuant to Section 13(n)(5)(B) of the Exchange Act and Rule 13n-4(b)(3), to confirm with both counterparties to a security-based swap the accuracy of the data that was submitted to the SDR?

- Specifically, do those aspects of the proposed rules provide a sufficient basis, in whole or in part, for an SDR to assess whether it can reasonably rely on a SBS Entity’s verification of transaction data as the basis to meet the requirements of Section 13(n)(5)(B) and Rule 13n-4(b)(3)? Why or why not?

- If not, should the Commission provide an exemption from the verification requirements described above to SDRs that reasonably rely on SBS Entities? Why or why not? If so, what specific terms and conditions should be included in such exemption and why?

- Are there other regulatory actions the Commission should consider to address the issue? If so, which ones and why?

- Should any aspect of the proposed analysis be modified in any way to account for other situations that may not be fully addressed here? If so, how and why? For example, would an SDR be able to reasonably rely on an SBS Entity to independently provide the definitive report of a given security-based swap position for both counterparties in situations when the SBS Entity is acting as agent for one of the two counterparties and is not itself a counterparty? Why or why not, and how should the analysis be revised to address that situation?

F. Recordkeeping Requirements

1. Proposed Amendments to Recordkeeping Rules

The Commission also is proposing rule amendments that would modify certain proposed requirements contained in its April 2014 release proposing rules for the recordkeeping, reporting, and notification requirements applicable to SBS Entities.¹¹⁹ Those rule amendments would require each SBS Entity to make and keep current

¹¹⁹ See *supra* note 2. Although we are proposing books and records requirements that would be additive to an existing proposal, we are not re-opening the comment period for the entirety of the SBS Books and Records Proposing Release. Rather, our request for comment in this section is limited solely to the recordkeeping requirements related to the rules we are proposing today.

information relevant to each portfolio reconciliation and portfolio compression exercise in which it participates, and to retain a record of each valuation dispute notification required pursuant to proposed Rule 15Fi-3(c), all security-based swap trading relationship documentation required to be created under proposed Rule 15Fi-5, a record of the results of each audit of the SBS Entity’s security-based swap trading relationship documentation policies and procedures, as required pursuant to proposed Rule 15Fi-5(c), and each policy and procedure created pursuant to proposed Rules 15Fi-3 through 15Fi-5.

Specifically, the Commission is proposing to amend: (1) Existing Rule 17a-3 under the Exchange Act, which applies to SBS Entities that are also registered with the Commission as broker-dealers under Section 15(b) of the Exchange Act (“broker-dealer SBS Entities”), and (2) proposed Rule 18a-5 under the Exchange Act, which applies to SBS Entities that are *not* also registered with the Commission as broker-dealers under Section 15(b) of the Exchange Act (“stand-alone and bank SBS Entities”). These proposed amendments would require each SBS Entity to make and keep current records of each security-based swap portfolio reconciliation, whether conducted pursuant to proposed Rule 15Fi-3 or otherwise,¹²⁰ a copy of each valuation dispute notification required to be provided to the Commission pursuant to proposed Rule 15Fi-3(c),¹²¹ and a record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to proposed Rule 15Fi-4 or otherwise.¹²²

With respect to the reconciliation requirement, the proposed rules would require that these records include the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio

¹²⁰ See proposed amendments to Rules 17a-3(a)(31)(i), 18a-5(a)(18)(i), and 18a-5(b)(14)(i).

¹²¹ See proposed amendments to Rules 17a-3(a)(31)(ii), 18a-5(a)(18)(ii), and 18a-5(b)(14)(ii).

¹²² See proposed amendments to Rules 17a-3(a)(31)(iii), 18a-5(a)(18)(iii), and 18a-5(b)(14)(iii).

¹¹⁸ See 17 CFR 242.901(a).

reconciliation, if any.¹²³ With respect to the valuation notification requirement, the proposed rules would require the retention of each notification required to be provided to the Commission pursuant to proposed Rule 15Fi-3(c).¹²⁴ With respect to compression, the proposed rules would require that these records include the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.¹²⁵ The Commission preliminarily believes that requiring SBS Entities to make and retain such records will, among other things, promote compliance with proposed Rules 15Fi-3 and 15Fi-4, assist SBS Entities in the event that they need to resolve problems that relate to a previous reconciliation or compression, and assist Commission examiners in reviewing compliance with those rules.

In addition, the Commission is proposing to amend (1) existing Rule 17a-4 under the Exchange Act, which requires each applicable broker-dealer, including broker-dealer SBS Entities, to preserve certain records if the broker-dealer makes or receives the type of record and (2) proposed Rule 18a-6 under the Exchange Act, which imposes parallel preservation requirements on stand-alone and bank SBS Entities. In particular, the proposed amendments to Rule 17a-4 and to proposed Rule 18a-6 would require SBS Entities to retain all of the records required to be made and kept under the proposed amendments to Rule 17a-3 and proposed Rule 18a-5 for at least three years, the first two years in an easily accessible place.¹²⁶ The proposed amendments also would require each SBS Entity to retain the following:

- the written policies and procedures required pursuant to proposed Rules 15Fi-3 through 15Fi-5 until three years after termination of the use of the policies and procedures;¹²⁷
- each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under proposed Rules 15Fi-3(a)(1) and (b)(1)

¹²³ See proposed amendments to Rules 17a-3(a)(31)(i), 18a-5(a)(18)(i), and 18a-5(b)(14)(i).

¹²⁴ See proposed amendments to Rules 17a-3(a)(31)(ii), 18a-5(a)(18)(ii), and 18a-5(b)(14)(ii).

¹²⁵ See proposed amendments to Rules 17a-3(a)(31)(iii), 18a-5(a)(18)(iii), and 18a-5(b)(14)(iii).

¹²⁶ See proposed amendments to Rules 17a-4(b)(1), 18a-6(b)(1)(i), and 18a-6(b)(2)(i).

¹²⁷ See proposed amendments to Rules 17a-4(e)(10) and 18a-6(d)(4).

until three years after the termination of the agreement and all transactions governed thereby;¹²⁸

- security-based swap trading relationship documentation with counterparties required to be created under proposed Rule 15Fi-5 until three years after the termination of such documentation and all transactions governed thereby;¹²⁹ and
- a record of the results of each audit required to be performed pursuant to proposed Rule 15Fi-5(c) until three years after the completion of the audit.¹³⁰

The Commission preliminarily believes that requiring the retention of the above records in accordance with the applicable rules will help ensure that those records are retained in a manner that would allow them to be readily accessible for Commission examiners.

2. Comments Requested

The Commission generally requests comments on all aspects of the proposed amendments to Rules 17a-3 and 17a-4 and to proposed Rules 18a-5, and 18a-6. In addition, the Commission requests comments on the following specific issues:

- Has the Commission provided sufficient guidance regarding the scope of the proposed recordkeeping amendments? Are there aspects of the proposed amendments for which the Commission should consider providing additional guidance? If so, please explain.
- How do the types of records that would need to be made and kept current under Rule 17a-3 and proposed Rule 18a-5, in each case as proposed to be amended in this release, align with the types of records that a futures commission merchant or a swap dealer is required to make pursuant to CFTC regulations?

II. Cross-Border Application of Rules 15Fi-3 Through 15Fi-5.

A. Background on the Cross-Border Application of Title VII Requirements

In 2013, the Commission proposed rules and interpretive guidance to address the cross-border application of Title VII, including requirements applicable to SBS Entities.¹³¹ In that

¹²⁸ See proposed amendments to Rules 17a-4(e)(11)(i) and 18a-6(d)(5)(i).

¹²⁹ See proposed amendments to Rules 17a-4(e)(11)(ii) and 18a-6(d)(5)(ii).

¹³⁰ See proposed amendments to Rules 17a-4(e)(11)(iii) and 18a-6(d)(5)(iii).

¹³¹ See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and

proposal, the Commission preliminarily interpreted the Title VII requirements associated with registration to apply generally to the activities of registered entities.¹³² The Commission further proposed a taxonomy to classify requirements under Section 15F of the Exchange Act as applying at either the transaction-level or at the entity-level.¹³³ The Commission took the preliminary view that transaction-level requirements under Section 15F of the Exchange Act are those that primarily focus on protecting counterparties to security-based swap transactions by requiring SBS dealers to, among other things, provide certain disclosures to counterparties, adhere to certain standards of business conduct, and segregate customer funds, securities, and other assets.¹³⁴

In contrast to transaction-level requirements, the Commission preliminarily took the view that entity-level requirements under Section 15F of the Exchange Act are those that are expected to play a role in ensuring the safety and soundness of the entity and thus relate to the SBS Entity as a whole.¹³⁵ Entity-level requirements include capital and margin requirements, as well as other requirements relating to a firm's identification and management of its risk exposure, such as the requirements in Section 15F(i) of the Exchange Act, which provides the statutory basis for the rules the Commission is proposing in this release.¹³⁶ Because these requirements relate to the entire entity, the Commission proposed to apply them to SBS Entities on a firm-wide basis, without exception.¹³⁷

Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) ("Cross-Border Proposing Release") (discussing joint rulemaking to further define various Title VII terms).

¹³² See *id.* at 30986 ("We are proposing to apply the Title VII requirements associated with registration (including, among others, capital and margin requirements and external business conduct requirements) to the activities of registered entities to the extent we have determined that doing so advances the purposes of Title VII.") (footnotes omitted).

¹³³ See *id.* at 31009-10.

¹³⁴ *Id.*

¹³⁵ See *id.* at 31011.

¹³⁶ See *id.* at 31011-16 (addressing the classification of capital and margin requirements, as well as of the documentation standard requirements of Section 15F(i) of the Exchange Act and other risk management requirements applicable to SBS dealers).

¹³⁷ See *id.* at 31011, 31024-25. See also *id.* at 31035 (applying the analysis to major SBS participants). In reaching this conclusion, the Commission explained that it "preliminarily believes that entity-level requirements are core requirements of the Commission's responsibility to ensure the safety and soundness of registered security-based swap dealers," and that "it would

The Commission first applied this taxonomy with respect to the rules adopted pursuant to Section 15F(i) of the Exchange Act in 2016 when we adopted rules to implement business conduct standards for SBS Entities.¹³⁸ The Commission subsequently determined that the trade acknowledgment and verification rules would apply at the entity-level.¹³⁹ The Commission has not, however, proposed or adopted a cross-border interpretation with respect to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements that we are now proposing.

B. Proposed Cross-Border Interpretation

Consistent with its approach in both the Cross-Border Proposing Release and the Trade Acknowledgment and Verification Adopting Release, the Commission believes that the requirements being proposed in this release pursuant to Section 15F(i) of the Exchange Act—as they relate to portfolio reconciliation, portfolio compression, and trading relationship documentation—should be treated as entity-level requirements that apply to an SBS Entity’s entire security-based swap business without exception, including in connection with any security-based swap business it conducts with foreign counterparties.

The Commission preliminarily believes that the requirements referenced above play an important role in addressing risks to the SBS Entity as a whole, including risks related to the entity’s safety and soundness. As we have noted throughout this release in connection with describing each of the proposed rules, providing SBS Entities

not be consistent with this mandate to provide a blanket exclusion to foreign security-based swap dealers from entity-level requirements applicable to such entities.” *Id.* at 31024 (footnotes omitted). The Commission further expressed the preliminary view that concerns regarding the application of entity-level requirements to foreign SBS dealers would largely be addressed through the proposed approach to substituted compliance. *See id.*

¹³⁸ See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30061–69 (May 13, 2016) (“Business Conduct Standards Adopting Release”). Under this framework, rules relating to diligent supervision pursuant to Section 15F(h)(1)(B), those relating to the chief compliance officer under Section 15F(k) of the Exchange Act, and those relating to certain risk management requirements under Section 15F(j) of the Exchange Act were determined to be entity-level requirements that apply to an SBS Entity’s business with foreign counterparties to the same extent that they apply to the SBS dealer’s or major SBS participant’s U.S. business. The remaining rules were determined to apply at the transaction-level.

¹³⁹ See Trade Acknowledgment and Verification Adopting Release, 81 FR at 39826.

and their counterparties to security-based swap transactions with the ability to identify and resolve discrepancies involving key terms of their transactions—which is a key consideration underpinning both the proposed portfolio reconciliation and trading relationship documentation requirements—serves as an important mechanism for allowing SBS Entities and their counterparties to manage their internal risks.¹⁴⁰ Similarly, portfolio compression is intended to help SBS Entities and their counterparties in security-based swap transactions manage their post-trade risks in a number of important ways, including by eliminating redundant uncleared derivatives transactions (as measured both by the number of contracts and total notional value) and potentially reducing a market participant’s credit risk to its direct counterparties, including by eliminating all outstanding transactions with some counterparties, without affecting the market participant’s overall economic position.¹⁴¹

An alternative approach that does not require an SBS Entity to take steps to manage its internal risk using portfolio reconciliation, compression, or standards governing trading relationship documentation could be expected to contribute to operational risk and legal uncertainty throughout the firm’s entire security-based swap business, affecting the entity’s business as a whole, and not merely specific security-based swap transactions. For example, as we have previously noted, inaccurate or incomplete trading relationship documentation could lead to, among other things, a collateral dispute between the counterparties to a security-based swap transaction. The larger the dispute, even if confined to a single counterparty, the greater the risk that an SBS Entity could experience liquidity problems on a firmwide basis.

Moreover, to the extent that these risks affect the safety and soundness of the SBS Entity, they also may affect the firm’s counterparties and the functioning of the broader security-based swap market. Continuing with the previous example, if a collateral dispute with a foreign counterparty creates liquidity issues throughout an SBS Entity, the firm could experience difficulty making payments or posting collateral to its other counterparties, which may include U.S. persons. Accordingly, the Commission preliminarily believes that it is appropriate to apply the proposed

¹⁴⁰ See *supra* note 14 and accompanying text.

¹⁴¹ See *supra* notes 62–63 and accompanying text.

requirements to the entirety of an SBS Entity’s security-based swap business.¹⁴²

C. Comments Requested

The Commission generally requests comments on its interpretative guidance regarding the cross-border application of Proposed Rules 15Fi–3 through 15Fi–5. In addition, the Commission requests comments on the following specific issues:

- Does the proposed approach appropriately treat the proposed portfolio reconciliation, portfolio compression, and trading relationship documentation requirements as entity-level requirements applicable to the entire business conducted by foreign SBS Entities? If not, please identify any particular aspects of those proposed rules that should not be applied to a foreign SBS Entity, or applied only to specific transactions, and explain how such an approach would be consistent with the goals of Title VII.
- Should the Commission apply the same cross-border approach to the application of the proposed portfolio reconciliation, portfolio compression, and trading relationship documentation requirements for both SBS dealers and major SBS participants? If you believe that the approach should vary based on the type of SBS Entity involved, please describe how the cross-border approach for SBS dealers should differ from the cross-border approach for major SBS participants, and explain the justification for any potential differences in approach.
- What types of conflicts might a foreign SBS Entity face if subjected to the proposed portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in more than one jurisdiction? In what situations would compliance with more than one of these requirements be difficult or impossible?
- As an alternative to treating the proposed requirements as entity-level requirements, should the Commission instead follow the approach taken by the CFTC and treat the proposed portfolio reconciliation, portfolio compression, and trading relationship documentation requirements (or some combination of the three) as transaction-level requirements? If so, to which cross-border security-based swap

¹⁴² We recognize that the CFTC has taken a different position with regard to corresponding requirements pursuant to the CEA, classifying them as what the CFTC has termed “Category A” transaction-level requirements. *See* CFTC Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45334 (Jul. 26, 2013).

transactions should these requirements apply and why? Please describe how these requirements would apply differently if classified as transaction-level requirements instead of as entity-level requirements. Please also describe any practical challenges that would be presented by classifying them differently from the CFTC.

III. Availability of Substituted Compliance for Rules 15Fi-3 Through 15Fi-5

A. Existing Substituted Compliance Rule

In 2016, the Commission adopted Rule 3a71-6 under the Exchange Act to provide that non-U.S. SBS Entities could satisfy applicable business conduct requirements under Section 15F by complying with comparable regulatory requirements of a foreign jurisdiction, subject to certain conditions. The rule in part provides that the Commission shall not make a determination providing for substituted compliance unless the Commission determines, among other things, that the foreign regulatory requirements are comparable to otherwise applicable requirements.¹⁴³ In adopting that substituted compliance rule, the Commission addressed a range of issues and concerns that commenters had raised in response to the substituted compliance proposal that was set forth in the Cross-Border Proposing Release.

When the Commission adopted this substituted compliance rule that solely addressed the business conduct rules, it stated that it expected to assess the potential availability of substituted compliance in connection with other requirements when the Commission considers final rules to implement those requirements.¹⁴⁴ Consistent with that statement, the Commission subsequently amended Rule 3a71-6 in the Trade Acknowledgment and Verification Adopting Release to provide SBS Entities with the potential to avail themselves of substituted compliance to satisfy the Title VII trade

acknowledgment and verification requirements.¹⁴⁵

B. Proposed Amendment to Rule 3a71-6

The Commission is proposing to further amend Rule 3a71-6 to provide SBS Entities that are not U.S. persons (as defined in Rule 3a71-3(a)(4) of the Exchange Act) with the potential to avail themselves of substituted compliance to satisfy the Title VII portfolio compression, portfolio reconciliation, and trading relationship documentation requirements. In proposing to amend the rule, the Commission has preliminarily concluded that the principles associated with substituted compliance, as previously adopted in connection with both the business conduct requirements and the trade acknowledgement and verification requirements, in large part should similarly apply to the portfolio compression, portfolio reconciliation, and trading relationship documentation requirements we are proposing today. Accordingly, except as discussed below, the proposed substituted compliance rule would apply to the portfolio compression, portfolio reconciliation, and trading relationship documentation requirements in the same manner as it already applies to the business conduct requirements and the trade acknowledgement and verification requirements.¹⁴⁶

1. Basis for Substituted Compliance in Connection With the Portfolio Reconciliation, Portfolio Compression, and Trading Relationship Documentation Requirements

In light of the global nature of the security-based swap market and the prevalence of cross-border transactions within that market, there is the potential that the application of the Title VII portfolio compression, portfolio reconciliation, and trading relationship documentation requirements may lead to requirements that are duplicative of, or in conflict with, applicable foreign requirements, even when the two sets of requirements implement similar goals and lead to similar results. Those results have the potential to disrupt existing business relationships and, more

generally, to reduce competition and market efficiency.¹⁴⁷

To address those effects, the Commission preliminarily believes that under certain circumstances it may be appropriate to allow the possibility of substituted compliance, whereby market participants may satisfy the proposed portfolio compression, portfolio reconciliation, and trading relationship documentation requirements by complying with comparable foreign requirements. Allowing for the possibility of substituted compliance in this manner may be expected to help achieve the benefits of those particular risk mitigation requirements—helping to curb legal uncertainty and reduce credit and operational risk for participants in security-based swap transactions and in the broader market—in a way that helps avoid regulatory conflict and minimizes duplication, thereby promoting market efficiency, enhancing competition, and contributing to the overall functioning of the global security-based swap market. Accordingly, the Commission is proposing to amend paragraph (d) of Rule 3a71-6 to identify the portfolio compression, portfolio reconciliation, and trading relationship documentation requirements of Title VII as being potentially eligible for substituted compliance.¹⁴⁸

2. Comparability Criteria, and Consideration of Related Requirements

As discussed when we first adopted Rule 3a71-6—and reiterated when we amended the rule pursuant to the Trade Acknowledgment and Verification Adopting Release—the Commission will endeavor to take a holistic approach in determining the comparability of foreign requirements for substituted compliance purposes, focusing on regulatory outcomes as a whole, rather than on a requirement-by-requirement comparison.¹⁴⁹ Under the proposed rule, the Commission's comparability assessments associated with the

¹⁴³ See Business Conduct Standards Adopting Release, 81 FR at 30074.

¹⁴⁴ The Commission first addressed the potential for allowing market participants to satisfy certain Title VII requirements by complying with comparable foreign rules as a substitute in 2013 as part of the Cross-Border Proposing Release. Pursuant to that release, the Commission proposed making substituted compliance potentially available in connection with the requirements applicable to SBS dealers pursuant to Section 15F of the Exchange Act, other than the registration requirements applicable to dealers. See Cross-Border Proposing Release, 78 FR at 31088, 31207-08 (proposed Rule 3a71-5).

¹⁴⁵ See Trade Acknowledgment and Verification Adopting Release, 81 FR at 39827-28.

¹⁴⁶ The discussions in the Business Conduct Standards Adopting Release, including those regarding consideration of supervisory and enforcement practices (see *id.* at 30079), regarding certain multi-jurisdictional issues (see *id.* at 30079-80), and regarding application procedures (see *id.* at 30080-81) are applicable to the proposed portfolio compression, portfolio reconciliation, and trading relationship documentation requirements.

¹⁴⁷ See generally Business Conduct Standards Adopting Release, 81 FR at 30073-74 (addressing the basis for making substituted compliance available in the context of the business conduct requirements).

¹⁴⁸ Paragraph (a)(1) of the rule provides that the Commission may, conditionally or unconditionally, by order, make a determination with respect to a foreign financial regulatory system that compliance with specified requirements under the foreign financial system by an SBS dealer and/or by a registered major SBS swap participant, or class thereof, may satisfy the corresponding requirements identified in paragraph (d) of the rule that would otherwise apply.

¹⁴⁹ See Business Conduct Standards Adopting Release, 81 FR at 30078-79. See also Trade Acknowledgment and Verification Adopting Release, 81 FR at 39828.

portfolio compression, portfolio reconciliation, and trading relationship documentation rules accordingly will consider whether, in the Commission's view, the foreign regulatory system achieves regulatory outcomes that are comparable to the regulatory outcomes associated with those Exchange Act requirements.

Proposed new paragraph (d)(4) of Rule 3a71-6 would also provide that prior to making a substituted compliance determination in connection with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements, the Commission intends to consider whether the requirements of the foreign financial regulatory system, the duties imposed by the foreign financial regulatory system, and the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, are comparable to those required pursuant to the applicable Exchange Act provisions.

In application, the Commission may determine to conduct its comparability analyses regarding the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in conjunction with comparability analyses regarding other Exchange Act requirements that, like the requirements we are proposing today, promote risk mitigation in connection with SBS Entities. Accordingly, depending on the applicable facts and circumstances, the comparability assessment associated with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements may constitute part of a broader assessment of Exchange Act risk mitigation requirements, and the applicable comparability decisions may be made at the level of those risk mitigation requirements as a whole.¹⁵⁰

3. Comments Requested

The Commission generally requests comments on all aspects of the proposed amendment to Rule 3a71-6. In addition,

¹⁵⁰ We have not proposed rules making substituted compliance available specifically with respect to the amendments we are proposing to proposed Rules 18a-5 and 18a-6, which specify the recordkeeping, reporting, and notification requirements applicable to SBS Entities. Rather, to the extent that substituted compliance is made available with respect to those rules, we would anticipate that any determination made with respect to the comparability of the foreign financial regulatory system would address all aspects of the Commission recordkeeping, reporting, and notification requirements for SBS Entities including any amendments that we ultimately adopt with respect to the portfolio reconciliation, portfolio compression, and trading relationship document requirements.

the Commission requests comments on the following specific issues:

- Should the Commission provide SBS Entities with the potential to avail themselves of substituted compliance to satisfy the Title VII portfolio reconciliation, portfolio compression, and trading relationship requirements? Why or why not? If you believe that substituted compliance should *not* be available with respect to these requirements, how would you distinguish this policy decision from the Commission's previous determination to make substituted compliance potentially available with respect to other Title VII requirements (*i.e.*, the business conduct rules and the trade acknowledgment and verification rules)?

- Do commenters agree with the scope and language of the proposed amendment to Rule 3a71-6? Why or why not? Are there aspects of the scope of the proposed rule for which the Commission should consider providing additional guidance? If so, what additional guidance should be provided and why?

- Are the items identified in the proposed amendment to Rule 3a71-6 as factors the Commission will consider prior to making a substituted compliance determination in connection with the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements appropriate? Why or why not? Should any of those items be modified or deleted? Should additional considerations be added? If so, please explain.

IV. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules, specific issues discussed in this release, and other matters that may have an effect on the proposed rules. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments. In addition, we would appreciate any comments related to the comparability of the rules we are proposing today and the corresponding CFTC rules already in effect, including whether certain aspects of the proposed rules should be modified to more fully conform to the CFTC's rules. In comparing the two sets of rules, commenters are encouraged to identify any areas where the proposed rules may not be sufficiently aligned with the corresponding CFTC rules, such that they could impose unnecessary burdens (with respect to

documentation or otherwise) on persons likely to register with the Commission as SBS Entities who are also registered with the CFTC as Swap Entities.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")¹⁵¹ imposes certain requirements on federal agencies in connection with the conducting or sponsoring of any "collection of information."¹⁵² For example, 44 U.S.C. 3507(a)(1)(D) provides that before adopting (or revising) a collection of information requirement, an agency must, among other things, publish a notice in the **Federal Register** stating that the agency has submitted the proposed collection of information to the Office of Management and Budget ("OMB") and setting forth certain required information, including: (1) A title for the collection information; (2) a summary of the collected information; (3) a brief description of the need for the information and the proposed use of the information; (4) a description of the likely respondents and proposed frequency of response to the collection of information; (5) an estimate of the paperwork burden that shall result from the collection of information; and (6) notice that comments may be submitted to the agency and director of OMB.¹⁵³

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the PRA. The Commission is submitting these collections of information to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. 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.

Specifically, proposed Rules 15Fi-3, 15Fi-4, and 15Fi-5 would impose new collection of information requirements. The title of these new collections of information is, collectively, "Rules 15Fi-3—15Fi-5—Risk Mitigation Techniques for Uncleared Security-Based Swaps." OMB has not yet assigned a control number to these new collections of information. In addition, the proposals to amend Rules 3a71-6, 17a-3 and 17a-4 would amend already-existing collection of information requirements. Finally, the proposals to amend proposed Rules 18a-5 and 18a-6 would amend proposed collection of information requirements that were previously submitted to OMB for review

¹⁵¹ 44 U.S.C. 3501 *et seq.*

¹⁵² See 44 U.S.C. 3502(3).

¹⁵³ See 44 U.S.C. 3507(a)(1)(D); see also 5 CFR 1320.5(a)(1)(iv).

in connection with the SBS Books and Records Proposing Release. The titles and control numbers for these collections of information are as follows:

(1) Rule 17a-3—Records to be made by certain brokers and dealers (OMB control number 3235-0033);

(2) Rule 17a-4—Records to be preserved by certain brokers and dealers (OMB control number 3235-0279);

(3) Rule 18a-5—Records to be made by certain security-based swap dealers and major security-based swap participants (OMB control number 3235-0745);

(4) Rule 18a-6—Records to be preserved by certain security-based swap dealers and major security-based swap participants (OMB control number 3235-0751); and

(5) Rule 3a71-6—Substituted Compliance for Foreign Security-Based Swap Dealers (OMB control number 3235-0715).

A. Summary of Collections of Information

1. Proposed Rule 15Fi-3: Portfolio Reconciliation

Proposed Rule 15Fi-3 generally would require SBS Entities to (1) engage in periodic portfolio reconciliation activities with counterparties who are also SBS Entities, and (2) establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in periodic portfolio reconciliation with counterparties who are not SBS Entities.¹⁵⁴ Among other things, proposed Rule 15Fi-3 would specify the requirements applicable to an SBS Entity for purposes of engaging in portfolio reconciliation with either type of counterparty (as well as the applicable definitions), with regard to (1) the information that the two sides would be required to exchange as part of the reconciliation process,¹⁵⁵ (2) the frequency by which an SBS Entity would be required to reconcile its security-based swap portfolios with its counterparties,¹⁵⁶ (3) the required policies and procedures specifying the means and timeframes by which an SBS Entity would be required to resolve discrepancies with respect to either the valuation or a material term of a security-based swap,¹⁵⁷ and (4) the requirement that an SBS Entity agree in writing with each of its counterparties

¹⁵⁴ Proposed Rule 15Fi-3 would not apply to any security-based swap that has a clearing agency as a direct counterparty.

¹⁵⁵ See *supra* Section I.B.2.

¹⁵⁶ See *supra* Sections I.B.3 and I.B.5.

¹⁵⁷ See *supra* Sections I.B.4 and I.B.5.

on the terms of the portfolio reconciliation, including agreement of the selection of any third-party service provider.¹⁵⁸ Finally, proposed Rule 15Fi-3(c) would require an SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity.¹⁵⁹

2. Proposed Rule 15Fi-4: Portfolio Compression

Proposed Rule 15Fi-4 would require SBS Entities to establish, maintain, and follow written policies and procedures related to bilateral offsetting of security-based swaps, and periodic bilateral and multilateral compression exercises. Specifically, proposed Rules 15Fi-4(a)(2) and (3) would require each SBS Entity to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with each counterparty that is an SBS Entity.¹⁶⁰ Similarly, proposed Rule 15Fi-4(a)(1) would require each SBS Entity to establish, maintain, and follow written policies and procedures for terminating each “fully offsetting security-based swap” that it maintains with another SBS Entity in a timely fashion, when appropriate.¹⁶¹ To the extent that an SBS Entity transacts with a counterparty that is *not* an SBS Entity, proposed Rule 15Fi-4(b) provides that such policies and procedures would only need to address terminating each “fully offsetting security-based swap” or engaging in a bilateral or multilateral portfolio compression exercise, when appropriate and to the extent requested by any such counterparty.¹⁶²

3. Proposed Rule 15Fi-5: Written Trading Relationship Documentation

Proposed Rule 15Fi-5 would require that each SBS Entity enter into written trading relationship documentation with each of its counterparties, subject to certain exceptions, prior to, or contemporaneously with, executing a security-based swap transaction, in each case in the manner as provided for in

¹⁵⁸ See *supra* Sections I.B.3 and I.B.5.

¹⁵⁹ See *supra* Section I.B.6.

¹⁶⁰ See *supra* Section I.C.2.

¹⁶¹ See *supra* Section I.C.3.

¹⁶² See *supra* Section I.C.2 and I.C.3.

the rule.¹⁶³ The proposed rule also requires that the trading relationship documentation include (1) credit support arrangements addressing certain specified items related to, among other things, margin haircuts, and custody of margin assets¹⁶⁴ and (2) agreements regarding the means by which the counterparties would determine the value of each security-based swap.¹⁶⁵ The proposal also contains requirements for SBS Entities and their counterparties to disclose to each other certain information regarding their legal and bankruptcy status, and to include a statement regarding the status of a security-based swap if accepted for clearing by a CCP.¹⁶⁶ Finally, the proposal would require each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by the rule.¹⁶⁷

4. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements

Rule 17a-3 requires a broker-dealer to make and keep current certain records, and Rule 17a-4 requires a broker-dealer to preserve certain records if it makes or receives them.¹⁶⁸ The Commission is proposing to amend these existing rules to account for the security-based swap risk mitigation activities of broker-dealers, including broker-dealer SBS Entities, by requiring the making and preserving of any required records regarding portfolio reconciliation, bilateral offsets, bilateral or multilateral portfolio compression, valuation disputes, and written trading relationship documentation. With respect to stand-alone SBS Entities, the Commission is proposing to amend proposed Rules 18a-5 and 18a-6—which were first proposed in 2014 and are themselves modeled on Rule 17a-3 and 17a-4—to account for these same risk mitigation requirements.¹⁶⁹

¹⁶³ See *supra* Section I.D.2. The proposed rule would require that the security-based swap trading relationship documentation address, among other things, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation and dispute resolution.

¹⁶⁴ See *id.*

¹⁶⁵ See *supra* Section I.D.3.

¹⁶⁶ See *supra* Section I.D.4.

¹⁶⁷ See *supra* Section I.D.5.

¹⁶⁸ 17 CFR 240.17a-3; 17 CFR 240.17a-4.

¹⁶⁹ See *supra* Section I.F.1.

5. Proposed Amendment to Rule 3a71-6: Substituted Compliance

The proposed amendment to Rule 3a71-6 would permit non-U.S. SBS Entities to comply with the proposed portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements by following the comparable regulatory requirements of a foreign financial regulatory system. Specifically, the proposal would add proposed Rules 15Fi-3 through 15Fi-5 to the list of Commission requirements eligible for a substituted compliance determination and would set forth the standard by which the Commission would make such determination.¹⁷⁰

B. Proposed Use of Information

1. Proposed Rule 15Fi-3: Portfolio Reconciliation

As previously noted, the Commission preliminarily believes that the information shared by counterparties to a security-based swap transaction periodically during the portfolio reconciliation process, as contemplated by proposed Rule 15Fi-3, will play an important role in assisting those counterparties in identifying and resolving discrepancies involving key terms of their transactions on an ongoing basis. This information also should allow those counterparties to improve their management of internal risks related to the enforcement of their rights and the performance of their obligations under a security-based swap. For example, the information obtained and provided in the course of portfolio reconciliation should help ensure that the counterparties to a security-based swap are and remain in agreement with respect to all material terms throughout the life of the transaction, thereby mitigating the possibility that a discrepancy could unexpectedly affect either side's ability to perform any or all of its obligations under the contract, including those obligations related to the posting of collateral. Moreover, requiring SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation (including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation) should help to minimize any discrepancies regarding the portfolio reconciliation process itself, thereby ensuring that it operates in as efficient and cost-effective means possible. Finally, the requirement to report certain unresolved valuation disputes to the Commission

should assist the Commission in identifying potential issues with respect to an SBS Entity's internal valuation methodology and also could serve as an indication of a widespread market disruption in cases where the Commission receives a large number of such notices from multiple firms.

2. Proposed Rule 15Fi-4: Portfolio Compression

As previously discussed, the Commission preliminarily believes that proposed Rule 15Fi-4 would help market participants by eliminating redundant uncleared derivatives contracts, thereby potentially reducing a market participant's credit risk to its direct counterparties, including by eliminating all outstanding contracts with some counterparties, without affecting the market participant's overall economic position. In addition, we preliminarily believe that the proposed collection of information is expected to lead to processing improvements for market participants, as envisioned by Section 15F(i) of the Exchange Act, by virtue of the fact that both SBS Entities and their counterparties should ultimately have fewer trades to manage, maintain, and settle, resulting in fewer opportunities for processing errors, failures, or other problems that could develop throughout the lifecycle of a transaction.

3. Proposed Rule 15Fi-5: Written Trading Relationship Documentation

The Commission preliminarily believes that the information required to be contained in the written trading relationship documentation pursuant to proposed Rule 15Fi-5 should help ensure that each SBS Entity mitigates risk with respect to its security-based swap portfolio by, among other things, enhancing clarity and legal certainty from the outset of a transaction regarding each party's rights and obligations. This outcome should help to reduce exposure to, among other things, counterparty credit risk and promote agreement regarding the proper valuation and other material terms of a security-based swap.

4. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements

The Commission preliminarily expects that the information contained in the records required to be made and kept pursuant to the proposed amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6 would be used to assist the Commission in conducting effective examinations and oversight of SBS Entities. In addition, records

regarding portfolio reconciliation, bilateral offsets, bilateral or multilateral portfolio compression, valuation disputes, and written trading relationship documentation should help to provide SBS Entities and their counterparties to security-based swaps with an ability to identify and resolve discrepancies involving key terms of their transactions on an ongoing basis, allowing for better management of internal risks related to performance of obligations, valuation, margin obligations, internal valuation systems and models, or internal controls.

5. Proposed Amendment to Rule 3a71-6: Substituted Compliance

Under the proposed amendment to Rule 3a71-6 under the Exchange Act, the Commission would use the information collected to evaluate requests for substituted compliance with respect to the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements applicable to SBS Entities.

C. Respondents

Proposed Rules 15Fi-3 through 15Fi-5 and Rules 17a-3, 17a-4, 18a-5, and 18a-6 would apply only to SBS Entities, each of which will be registered with the Commission. In a number of prior releases, including the release adopting the rules by which SBS Entities can register (and withdraw from registration) with the Commission, we estimated that approximately 50 entities may meet the definition of SBS dealer, and up to five entities may meet the definition of major SBS participant.¹⁷¹ The Commission continues to believe that these estimates are appropriate. Thus, the Commission preliminarily believes that approximately 55 entities will be required to register with the Commission under either category, and will therefore be subject to Rules 15Fi-3 through 15Fi-5.

With regard to the requirements under Rule 3a71-6, as proposed to be amended, requests for a substituted compliance determination with respect to the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements may be filed by foreign financial authorities, or by non-U.S. SBS Entities. Consistent with prior estimates, the Commission expects that there may be approximately 22 non-U.S. entities that may potentially register as SBS dealers, out of approximately 50 total

¹⁷¹ See SBS Entity Registration Adopting Release, 80 FR at 48990. See also Trade Acknowledgement and Verification Adopting Release, 81 FR at 39830.

¹⁷⁰ See *supra* Sections III.B.1 and III.B.2.

entities that may register as SBS dealers.¹⁷²

Potentially, all such non-U.S. SBS dealers, or some subset thereof, may seek to rely on a substituted compliance determination in connection with these portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements.¹⁷³ In practice, however, the Commission expects that the greater portion of any such requests will be submitted by foreign financial authorities, given their expertise in connection with the relevant substantive requirements, and in connection with their supervisory and enforcement oversight with regard to SBS dealers and their activities.

D. Total Annual Recordkeeping Burden

1. Portfolio Reconciliation Activities Generally

Under proposed Rule 15Fi-3(a), the approximately 55 respondent SBS Entities would be required to reconcile security-based swap portfolios with

other SBS Entities on a daily, weekly, or quarterly basis, depending upon the size of the portfolio. For purposes of this requirement, the Commission preliminarily estimates that each SBS Entity will engage in security-based swap transactions with approximately one-third of the other 54 SBS Entities, meaning that an SBS Entity will maintain security-based swap portfolios with approximately 18 SBS Entities. Of this total, we preliminarily believe that, on average, two SBS Entity counterparty portfolios will require daily reconciliation (*i.e.*, a portfolio consisting of 500 or more uncleared security-based swaps), four SBS Entity counterparty portfolios will require weekly reconciliation (*i.e.*, a portfolio of more than 50 but fewer than 500 uncleared security-based swaps), and the remaining 12 SBS Entity counterparty portfolios will require quarterly reconciliation (*i.e.* a portfolio of no more than 50 uncleared security-based swaps).¹⁷⁴ The Commission therefore estimates that each SBS Entity will

engage in an average of 760 portfolio reconciliations with other SBS Entities per year.¹⁷⁵

The Commission preliminarily believes that each portfolio reconciliation is likely to be conducted through an automated process.¹⁷⁶ As a result, we preliminarily believe that each reconciliation will require an average of 30 minutes to complete in total (which is the combined estimate for both counterparties), regardless of the size of the security-based swap portfolio with the applicable counterparty.¹⁷⁷ Using these figures, the Commission preliminarily estimates that compliance with proposed Rule 15Fi-3(a), as it relates to engaging in portfolio reconciliation with other SBS Entities, will impose an average annual burden of approximately 190 hours per year on each of the respondent 55 SBS Entities, for an estimated average annual burden of 10,450 hours in the aggregate. These calculations are summarized in PRA Table 1, below.

PRA TABLE 1—PROPOSED RULE 15i-3(a): PORTFOLIO RECONCILIATIONS WITH OTHER SBS ENTITIES

Number of counterparties per respondent	Number of annual reconciliations	Hourly burden per reconciliation (hours)	Total annual burden (hours)
2 (≥500 transactions)	252 (daily) .....	.25	126
4 (>50-500 transactions)	52 (weekly) .....	.25	52
12 (≤50 transactions)	4 (quarterly) .....	.25	12
Total per respondent .....	.....	.....	190
Total Aggregate Annual Burden for all 55 respondents .....	.....	.....	10,450

In addition, proposed Rule 15Fi-3(b) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps (other than security-based swaps that will be cleared by a clearing

agency) in which its counterparty is not an SBS Entity.¹⁷⁸ In calculating the burden of performing the portfolio reconciliations required by these policies and procedures, the Commission preliminarily estimates that (1) there are currently 13,082 market participants in security-based

swaps who will not be required to register as SBS Entities,¹⁷⁹ and (2) each SBS Entity will have an average of approximately 350 of these non-SBS Entity market participants as counterparties.¹⁸⁰ Further, the Commission preliminarily believes that reconciliations with these parties will

¹⁷² See Application of the Title VII Security-Based Swap Dealer De Minimis Counting Requirements to Activity in the United States,” Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, 8605 (Feb. 19, 2016) (“U.S. Activity Adopting Release”); see also Business Conduct Standards Adopting Release, 81 FR at 30090.

¹⁷³ Consistent with prior estimates, the Commission further believes that there may up to five major SBS participants. See SBS Entity Registration Adopting Release, 80 FR at 49000; see also Business Conduct Standards Adopting Release, 81 FR at 30089. It is possible that some subset of those entities will be non-U.S. major SBS participants that will seek to rely on substituted compliance in connection with the applicable portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements.

¹⁷⁴ These estimates are consistent with those used by the CFTC in connection with its portfolio reconciliation rule. See Confirmation, Portfolio

Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, 81528 (Dec. 28, 2010).

¹⁷⁵ This estimate uses 252 business days for purposes of the daily portfolio reconciliation requirement, which is consistent with the definition of “business day” in proposed Rule 15Fi-1(b).

¹⁷⁶ The Commission recognizes that some respondents may choose to engage a third-party vendor to conduct portfolio reconciliations. For simplicity, however, the Commission’s burden estimate is based upon SBS Entities conducting these activities internally, without the use of third-party vendors. The Commission welcomes comments on this approach, including regarding the likelihood and cost of using third-party providers.

¹⁷⁷ Because the 30 minute estimate is for the entire reconciliation process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of security-based swap

portfolios between two SBS Entities, resulting in an estimate of 15 minutes per reconciliation per counterparty for those portfolios.

¹⁷⁸ The Commission’s estimate for the hourly burden for preparing these policies and procedures is discussed below.

¹⁷⁹ In the Economic Analysis, the Commission estimates that there are approximately 13,137 market participants in the security-based swap market. See *infra* Section VI.B.1.c (Table 2). Subtracting the estimated 55 SBS Entities from this figure results in an estimated 13,082 non-SBS Entities.

¹⁸⁰ This estimate is based upon the assumption that each non-SBS Entity market participant will do business with, on average, between one or two SBS Entities and is calculated as follows: ((13,082 non-SBS Entity market participants/55 SBS Entities) × 1.5 SBS Entities per non-SBS market participants) = approximately 350 non-SBS Entity counterparties per SBS Entity.

be conducted on a quarterly basis for 10% of these portfolios (*i.e.*, portfolios with more than 100 uncleared security-based swaps), and on an annual basis for the remaining 90% of these portfolios (*i.e.*, portfolios that do not involve 100 or more uncleared security-based swaps).¹⁸¹

The Commission further estimates that each portfolio reconciliation

between an SBS Entity and a non-SBS Entity will require an average of 30 minutes to complete (which is the combined estimate for both counterparties).¹⁸² Using these figures, the Commission preliminarily estimates that compliance with proposed Rule 15Fi-3(b), as it relates to conducting portfolio reconciliations with non-SBS

Entities, will impose an annual hourly burden of approximately 227.5 hours per SBS Entity, for an estimated average annual burden of approximately 12,512.5 hours in the aggregate for all 55 SBS Entity respondents. These calculations are summarized in PRA Table 2, below.

PRA TABLE 2—PROPOSED RULE 15i-3(b): PORTFOLIO RECONCILIATIONS WITH NON-SBS ENTITIES

Number of counterparties per respondent	Number of annual reconciliations	Hourly burden per reconciliation	Total annual burden (hours)
35 (>100 transactions)	4 (quarterly) .....	.5	70
315 (≤100 transactions)	1 (annual) .....	.5	157.5
Total per respondent			227.5
Total Aggregate Annual Burden for all 55 respondents			12,512.5

2. Establishing, Maintaining, and Enforcing Written Policies and Procedures

Proposed Rule 15Fi-3 also contains policies and procedures requirements applicable to SBS Entities in connection with engaging in portfolio reconciliation with both SBS Entities and other counterparties. As the Commission explained in the Business Conduct Standards Adopting Release, the Commission estimates that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities.¹⁸³ In addition, other than as expressly noted above in Section I.B, the CFTC’s adopted final rules on portfolio reconciliation written policies and procedures are substantively identical to those proposed by Rule 15Fi-3. Accordingly, these 35 dually-registered entities are already required to establish, maintain, and follow written policies and procedures as they relate to the reconciliation of their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be

required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-3, we preliminarily estimate that the initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time initial burden of 35 hours in the aggregate. With respect to the remaining 20 SBS Entities that will not be dually-registered with the CFTC, the Commission preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated one-time initial burden of 1,600 hours in the aggregate.¹⁸⁴ Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities),¹⁸⁵

for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.¹⁸⁶

3. Reporting of Certain Valuation Disputes

Proposed Rule 15Fi-3(c) would require each SBS Entity to promptly notify the Commission (and any applicable prudential regulator for an SBS Entity that is also a bank), in a form and manner acceptable to the Commission, of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within a prescribed time period. As previously noted, we crafted the rule in this way to provide SBS Entities with flexibility to determine the most efficient and cost-effective form and manner of making such submissions, so long as it is deemed to be acceptable by the Commission.¹⁸⁷ Accordingly, we preliminarily do not expect there to be any initial burden of designing a system for submitting these notices.¹⁸⁸ We also preliminarily believe that the associated ongoing hourly burden of preparing and submitting such notices would be minimal. In addition, until SBS Entities

¹⁸¹ Accordingly, of the estimated 350 security-based swap portfolios that an SBS Entity maintains with non-SBS Entities, 90% (or 315) will require only one portfolio reconciliation each year, and 10% (or 35) will require quarterly portfolio reconciliations, resulting in a total of 455 portfolio reconciliations per SBS Entity per year.

¹⁸² This figure is identical to the estimate used for reconciliations between two SBS Entities (before dividing by one-half to avoid double-counting) and is consistent with the estimate used by the CFTC, which used an estimate of six minutes (or .10 hours) in connection with its portfolio reconciliation requirements. See *supra* notes 174 and 177 and accompanying text.

¹⁸³ See Business Conduct Standards Adopting Release, 81 FR at 30098.

¹⁸⁴ This estimate is based on Commission staff discussions with market participants and is calculated as follows: (((Compliance Attorney at 40 hours) + (Director of Compliance at 20 hours) + (Deputy General Counsel at 20 hours))) = 80 hours per SBS Entity. See Trade Acknowledgment and Verification Adopting Release, 81 FR at 39831 n. 242.

¹⁸⁵ Although dually-registered SBS Entities would technically need to revise and maintain their policies and procedures to ensure compliance with both the Commission’s and CFTC’s rules, we have preliminarily decided to conservatively assume that all of the estimated hours would be incurred in connection with compliance with the collection of information associated with proposed Rule 15Fi-3.

¹⁸⁶ This estimate is based on Commission staff discussions with market participants and is

calculated as follows: (((Compliance Attorney at 20 hours) + (Director of Compliance at 10 hours) + (General Counsel at 10 hours))) = 40 hours per SBS Entity. See Trade Acknowledgment and Verification Adopting Release, 81 FR at 39831 n. 243.

¹⁸⁷ See *supra* note 47.

¹⁸⁸ In the request for comments, we asked whether we should require such notices to be submitted in a particular manner, such as having them sent to a dedicated email box or using the EDGAR system (or any successor system thereto, as designated by the Commission). As SBS Entities will already have access to EDGAR (and a Form ID) by virtue of having used the system to register with the Commission, we would not expect there to be any initial burden associated with either approach.

are registered with the Commission, it is difficult for us to determine the typical number of valuation disputes meeting the applicable thresholds that SBS Entities would be required to submit on an annual basis. As such, and consistent with the estimate the CFTC provided when it first proposed a similar requirement, we preliminarily estimate that each SBS Entities will spend on average of 24 hours each year complying with this requirement, for an estimated average annual burden of 1,320 hours in the aggregate for all 55 respondents.¹⁸⁹ We also recognize, however, that there are differences between the markets for swaps and security-based swaps and

welcomes comment from the public on this estimate.

Combining all of the estimated burdens described above, the Commission preliminarily estimates that proposed Rule 15Fi-3 would impose an estimated one-time initial burden of 1,635 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring existing ones into compliance. The Commission also preliminarily estimates that proposed Rule 15Fi-3 would impose an estimated ongoing burden of 26,482.5 hours each year in the aggregate for all SBS Entities, which is composed of (1) an estimated annual burden of 10,450 hours in the aggregate

for all SBS Entities to engage in portfolio reconciliation with SBS Entities; (2) an estimated annual burden of 12,512.5 hours in the aggregate for all SBS Entities to engage in portfolio reconciliation with non-SBS Entities; (3) an estimated annual burden of 2,200 hours in the aggregate for all SBS Entities to revise and maintain the written policies and procedures required pursuant to the rule; and (4) 1,320 hours for all SBS Entities to report certain large valuation disputes to the Commission and any applicable prudential regulator.¹⁹⁰ These calculations are summarized in PRA Tables 3 and 4, below.

PRA TABLE 3—PROPOSED RULE 15Fi-3: TOTAL ESTIMATED INITIAL BURDENS

Requirement	Hourly burden	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (35 dual SEC-CFTC registrants)	1	35
Preparation of New Written Policies and Procedures (20 SEC-only registrants)	80	1,600
Total Aggregate One-Time Burden for all 55 respondents		1,635

PRA TABLE 4—PROPOSED RULE 15Fi-3: SUMMARY OF ANNUAL BURDENS

Requirement	Aggregate hourly burden (all 55 respondents)
Portfolio Reconciliations with Other SBS Entities	10,450
Portfolio Reconciliations with Non-SBS Entities	12,512.5
Revise and Maintain Written Policies and Procedures	2,200
Prepare and Submit Notices of Valuation Disputes >\$20 million	1,320
Total Aggregate Annual Burden for all 55 respondents	26,482.5

4. Proposed Rule 15Fi-4: Portfolio Compression

With regard to the written policies and procedures, the Commission continues to believe that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities. In addition, and as we previously noted, the CFTC's adopted final rules requiring Swap Entities to establish, maintain, and follow written policies and procedures on bilateral offsets and portfolio compression exercises are, other than as expressly noted above in Section I.C, substantively identical to those proposed by Rule 15Fi-4. Accordingly, these 35 entities are already required to establish, maintain, and follow relevant written policies and procedures related

to bilateral offsets and portfolio compression exercises involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-4, we preliminarily estimate that the initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time initial burden of 35 hours in the aggregate.

With respect to the remaining 20 SBS Entities that are not dually-registered with the CFTC, the Commission preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and

procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated average annual burden of 1,600 hours in the aggregate.¹⁹¹ Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.

In addition, the respondents will incur additional hourly burdens as they undertake bilateral offsets and portfolio compression exercises consistent with these written policies and procedures. As noted above the Commission estimates that each of the 55 estimated

¹⁸⁹ See Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6723 (Feb. 8, 2011).

¹⁹⁰ Rule 15Fi-3(a)(1) and 15Fi-3(b)(1) also require an SBS Entity to agree in writing with each of its

counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. The Commission expects SBS Entities to undertake this agreement as part of the written trading relationship

documentation each is required to enter into with its counterparties as a result of proposed Rule 15Fi-5. Thus, the estimate here does not account for this burden, which is instead assumed to form part of the burden of complying with Rule 15Fi-5.

¹⁹¹ See supra note 184.

SBS Entities will be counterparty to an average of 18 other SBS Entities and 350 non-SBS Entities, for a total of 368 counterparties. For purposes of conducting bilateral offsets and portfolio compression exercises, the Commission preliminarily estimates that (1) each SBS Entity will have an average of one set of security-based swaps that are eligible for annual bilateral offset with each of these 368 counterparties, (2) each SBS Entity will conduct an annual bilateral compression exercise with one-third, or six of its 18 SBS Entity counterparties, (3) each SBS Entity will conduct an annual bilateral compression exercise with each of its 350 non-SBS Entity counterparties, and (4) each SBS Entity

will engage in multilateral compression exercises at an average rate of 12 exercises per year.

The Commission preliminarily believes that each bilateral offset and portfolio compression exercise is likely to be conducted through an automated process. As a result, we preliminarily believe that (1) each bilateral offset will require on average five minutes of respondent time to complete with each of the 350 non-SBS Entity counterparties, (2) each bilateral offset will require on average 2.5 minutes of respondent time to complete with each of the 18 SBS Entity counterparties,¹⁹² (3) each bilateral compression will require an average of 15 minutes of respondent time to complete with each

of the 350 non-SBS Entity counterparties, (4) each bilateral compression will require an average of 7.5 minutes with each of the six SBS Entity counterparties,¹⁹³ and (5) each multilateral compression exercise will require an average of 30 minutes of respondent time to complete 12 times annually. In each of those hourly burdens, the figure used is the combined estimate for both counterparties. Based on these estimates, the Commission estimates the average annual hourly burden for these activities at 124.16 hours per respondent, an estimated average annual burden of 6,828.8 hours in the aggregate. These calculations are summarized in PRA Table 5, below.

PRA TABLE 5—PORTFOLIO COMPRESSION WITH ALL ENTITIES

Type of exercise	Number of counterparties	Number of annual exercises	Hourly burden per exercise (hours)	Total annual burden (hours)
Bilateral Offset (w/non-SBS Entities)	350	1	.0833	29.16
Bilateral Offset (w/SBS Entities)	18	1	.0417	.75
Bilateral Compression (w/non SBS-Entities)	350	1	.25	87.5
Bilateral Compression (w/SBS Entities)	6	1	.125	.75
Multilateral Compression	N/A	12	.5	6
Total per respondent				124.16
Total Aggregate Annual Burden for all 55 respondents				6,828.8

Combining all of the estimated burdens described above, the Commission preliminarily estimates that proposed Rule 15Fi-4 would impose an estimated one-time initial burden of 1,635 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring existing ones into compliance. The Commission also preliminarily estimates that proposed Rule 15Fi-4 would impose an estimated ongoing burden of 9,028.8 hours each year in the

aggregate for all SBS Entities, which is composed of (1) an estimated annual burden of 1,603.8 hours in the aggregate to conduct bilateral offsets with non-SBS Entities; (2) an estimated annual burden of 41.25 hours in the aggregate to conduct bilateral offsets with SBS Entities; (3) an estimated annual burden of 4,812.5 hours in the aggregate to participate in bilateral compression exercises with non-SBS Entities; (4) an estimated annual burden of 41.25 hours in the aggregate to participate in

bilateral compression exercises with SBS Entities; (5) an estimated annual burden of 330 hours in the aggregate to participate in multilateral compression exercises; and (6) an estimated annual burden of 2,200 hours in the aggregate for all SBS Entities to revise and maintain written policies and procedures. These calculations are summarized in PRA Tables 6 and 7, below.

PRA TABLE 6—PROPOSED RULE 15Fi-4: TOTAL ESTIMATED INITIAL BURDEN

Activity	Hourly burden (hours)	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (35 dual SEC-CFTC registrants)	1	35
Preparation of New Written Policies and Procedures (20 SEC-only registrants)	80	1,600
Total Aggregate One-Time Burden for all 55 respondents		1,635

¹⁹² Similar to our estimates in the context of the portfolio reconciliation requirements, because the five minute estimate is for the entire bilateral offset process, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the

context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 2.5 minutes per bilateral offset for those portfolios.

¹⁹³ Again, we have divided the 15 minute estimate to complete the bilateral compression

exercise by one-half in the context of security-based swap portfolios between two SBS Entities, resulting in an estimate of 7.5 minutes per bilateral compression for those portfolios.

PRA TABLE 7—PROPOSED RULE 15Fi-3: SUMMARY OF ANNUAL BURDENS

Requirement	Aggregate hourly burden (hours) (all 55 respondents)
Bilateral Offsets with non-SBS Entities	1,603.8
Bilateral Offsets with SBS Entities	41.25
Bilateral Compression with non-SBS Entities	4,812.5
Bilateral Compression with SBS Entities	41.25
Multilateral Compression	330
Revise and Maintain Written Policies and Procedures	2,200
Total Aggregate Annual Burden for all 55 respondents	9,028.8

5. Proposed Rule 15Fi-5: Written Trading Relationship Documentation

As previously noted, the Commission estimates that each SBS Entity will have 18 SBS Entity counterparties and 350 non-SBS Entity counterparties, for a total of 368 counterparties per SBS Entity. For the purposes of the underlying documentation requirements, and based on staff discussions with market participants, the Commission understands that many SBS Entities already have in place industry-standard written trading relationship documentation that is likely to contain many of the elements required by this proposed rule. With this in mind, the Commission preliminarily estimates that (1) the initial burden per respondent to negotiate and draft written trading relationship documentation with non-SBS Entities that is compliant with proposed Rule 15Fi-5 will be approximately 30 hours (which is the combined estimate for both counterparties), and (2) the initial burden per respondent to negotiate and draft written trading relationship documentation with SBS Entities that is compliant with proposed Rule 15Fi-5 will be approximately 15 hours.¹⁹⁴ These estimates are averages, and both account for the fact that some SBS Entities may lack appropriate documentation in certain respects and will need to enter into new documentation with counterparties, while in other cases existing documentation will need only to be modified to be brought into compliance. The Commission’s estimates are further based on an assumption that, in each

case, the written documentation will always include the valuation agreements set forth in proposed Rule 15Fi-5(b)(4), notwithstanding the fact that the rule only requires this information in certain circumstances.

Based on these estimates and assumptions, the Commission preliminarily believes that the requirement to prepare written relationship documentation in accordance with proposed Rule 15Fi-5 will result in an estimated one-time initial burden of 9,540 hours for each of the 55 SBS Entity respondents, for an estimated average one-time burden of 524,700 hours in the aggregate. The Commission also preliminarily believes that there will be little need to modify the written trading relationship documentation on an ongoing basis once it is in place, and therefore is not estimating any additional annual hourly burden for ongoing modifications.

With regard to the written policies and procedures required pursuant to proposed Rule 15Fi-5, the Commission continues to believe that of the estimated 55 persons that may register with the Commission as SBS Entities, approximately 35 will be dually-registered with the CFTC as Swap Entities. In addition, and as we previously noted, the CFTC’s adopted final rules requiring Swap Entities to establish, maintain, and follow written policies and procedures requiring the execution of written trading relationship documentation are, other than as expressly noted above in Section I.D, substantively identical to those proposed by Rule 15Fi-5. Accordingly, these 35 entities are already required to establish, maintain, and follow relevant written policies as they relate to the execution of written trading relationship documentation involving their swap portfolios, and these policies and procedures would be expected to be largely consistent with those that would be required with respect to their security-based swap portfolios. Assuming that these existing policies

and procedures would simply need to be amended to apply to security-based swap transactions upon adoption of proposed Rule 15Fi-5, we preliminarily estimate that the average initial burden of revising these policies and procedures would be one hour per respondent, for an estimated one-time burden of 35 hours in the aggregate.

With respect to the remaining 20 SBS Entities that are not dually-registered with the CFTC, the Commission preliminarily estimates, based on prior estimates in earlier Dodd-Frank rulemakings, that these policies and procedures would require an average of 80 hours per non-dually-registered respondent to initially prepare and implement, for an estimated average annual burden of 1,600 hours in the aggregate.¹⁹⁵ Once these policies and procedures are established, the Commission estimates that it will take an average of 40 hours annually to revise and maintain these policies and procedures per respondent (including both dually-registered and non-dually-registered SBS Entities), for an estimated average annual burden of 2,200 hours in the aggregate for all 55 respondents.

With regard to having an independent auditor conduct the required periodic audit of written trading relationship documentation and the requirement to retain a record of each such audit, the Commission estimates that it will take an average of 10 hours to audit an SBS Entity’s documentation with each of its 368 counterparties, for a total of 3,680 hours per SBS Entity, or 202,400 hours for all 55 SBS Entity respondents.

Combining all of the estimated burdens described above, the Commission preliminarily estimates that proposed Rule 15Fi-5 would impose an estimated one-time initial burden of 593,985 hours in the aggregate for all SBS Entities, which consists of (1) 1,635 hours in the aggregate for all SBS Entities to prepare new written policies and procedures or to bring

¹⁹⁴ As was the case in calculating the PRA estimates for the portfolio reconciliation and portfolio compression requirements, because the 30 hours estimate is for the entire process of negotiating and executing written trading relationship documentation, without respect to how that time is allocated between the two parties, to avoid double-counting we have divided it by one-half in the context of counterparties that are also SBS Entities, resulting in an estimate of 15 hours to negotiate and execute such documentation.

¹⁹⁵ See supra note 184.

existing ones into compliance, (2) 577,500 hours in the aggregate for SBS Entities to negotiate and execute trading relationship documentation with 350 non-SBS Entity counterparties, and (3) 14,850 hours in the aggregate for SBS Entities to negotiate and execute trading relationship documentation with 18

SBS Entity counterparties. The Commission also preliminarily estimates that proposed Rule 15Fi-5 would impose an estimated ongoing burden of 204,600 hours each year in the aggregate for all SBS Entities, which is composed of: (1) An estimated annual burden of 2,200 hours in the aggregate

for all SBS Entities to revise and maintain written policies and procedures and (2) an estimated annual burden of 202,400 hours in the aggregate for all SBS Entities to conduct the required periodic audits. These calculations are summarized in PRA Tables 8 and 9, below.

PRA TABLE 8—PROPOSED RULE 15Fi-5: TOTAL ESTIMATED INITIAL BURDENS

Activity	Hourly burden (hours)	Total one-time burden (hours)
Preparation of New Written Policies and Procedures (35 dual SEC-CFTC registrants)	1	35
Preparation of New Written Policies and Procedures (20 SEC-only registrants)	80	1,600
Negotiate and Execute Trading Relationship Documentation with 350 non-SBS Entities (all 55 respondents)	30	577,500
Negotiate and Execute Trading Relationship Documentation with 18 SBS Entities (all 55 respondents)	15	14,850
Total Aggregate One-Time Burden for all 55 respondents		593,985

PRA TABLE 9—PROPOSED RULE 15Fi-3: SUMMARY OF ANNUAL BURDENS

Requirement	Aggregate hourly burden (hours) (all 55 respondents)
Audit of Written Trading Relationship Documentation	202,400
Revise and Maintain Written Policies and Procedures	2,200
Total Aggregate Annual Burden for all 55 respondents	204,600

6. Proposed Amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6: Books and Records Requirements

The proposed amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6 would impose collection of information requirements that result in initial and annual time burdens for SBS Entities. The proposed amendments to Rules 17a-3 and 18a-5 would require three additional types of records to be made and kept current by SBS Entities—records regarding portfolio reconciliations, valuation disputes, and portfolio compressions. Because the burden to make these records is accounted for in the PRA estimates for proposed Rules 15Fi-3 and 15Fi-4, the burden imposed by these proposed new requirements is the requirement in Rules 17a-4 and 18a-6 to maintain and preserve a written record of these tasks, as well as the additional requirements in those provisions to maintain and preserve records of policies and procedures required by Rules 15Fi-3 through 15Fi-5 and written agreements with counterparties regarding the terms of portfolio reconciliation. The Commission estimates that these recordkeeping requirements, as proposed to be amended, would impose an initial burden of 60 hours per firm for updating the applicable policies and systems required to account for capturing the additional records made

pursuant to proposed Rule 15Fi-3 through 15Fi-5, and an ongoing annual burden of 75 hours per firm for maintaining such records as well as to make additional updates to the applicable recordkeeping policies and systems to account for the proposed rules. As noted previously, the Commission estimates that there are 55 SBS Entity respondents, for a total average initial annual burden for all respondents of 3,300 hours and a total ongoing average annual burden of 4,125 hours.

7. Proposed Amendment to Rule 3a71-6: Substituted Compliance

Proposed amended Rule 3a71-6 would require submission of certain information to the Commission to the extent SBS Entities elect to request a substituted compliance determination with respect to the proposed portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements. The Commission expects that registered SBS Entities will seek to rely on substituted compliance upon registration, and that it is likely that the majority of such requests will be made during the first year following the effective date. Requests would not be necessary with regard to applicable rules and regulations of a foreign financial regulatory system that have previously been the subject of a substituted

compliance determination in connection with the applicable rules.

The Commission expects that the great majority of substituted compliance applications will be submitted by foreign authorities, and that very few substituted compliance requests will come from SBS Entities. For purposes of this assessment, the Commission estimates that three such SBS Entities will submit such an application.¹⁹⁶

The Commission has previously estimated that the paperwork burden associated with making each such substituted compliance request would be approximately 80 hours of in-house counsel time, plus \$80,000 for the services of outside professionals (based on 200 hours of outside time x \$400 per hour).¹⁹⁷ The Commission is currently of the belief that this prior estimate is sufficient to cover a combined substituted compliance request that also seeks a determination for the portfolio reconciliation, portfolio compression, and written trading relationship documentation rules proposed in this release. This estimate results in an aggregate total of 240 internal hours, plus \$240,000 for outside services. Therefore, the Commission estimates that the total paperwork burden incurred by such entities associated

¹⁹⁶ See Business Conduct Standards Adopting Release, 81 FR at 30097 n. 1582.

¹⁹⁷ See Business Conduct Standards Adopting Release, 81 FR at 30097 n. 1583.

with preparing and submitting a request for a substituted compliance determination in connection with the portfolio reconciliation, portfolio compression, and written trading relationship documentation requirements will be approximately 240 hours per applicant, plus \$240,000 for the services of outside professionals for all three requests.

E. Collection of Information Is Mandatory

Each collection of information for proposed Rules 15Fi-3 through 15Fi-5 and for the proposed amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6 is a mandatory collection of information. With respect to the proposed amendment to Rule 3a71-6, the application for substituted compliance is mandatory for all foreign financial authorities or SBS Entities that seek a substituted compliance determination.

F. Confidentiality

Proposed Rule 15Fi-3(c) would require an SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within: (1) Three business days, if the dispute is with a counterparty that is an SBS Entity; or (2) five business days, if the dispute is with a counterparty that is not an SBS Entity. We have requested comment as to whether these notices should be submitted to the Commission on a confidential basis. No other information would be submitted directly to the Commission under proposed Rules 15Fi-3 through 15Fi-5 or under the proposed amendments to Rules 17a-3, 17a-4, 18a-5, and 18a-6. To the extent that the Commission receives confidential information pursuant to this collection of information that is otherwise not publicly available, including in connection with examinations or investigations, that information will be kept confidential, subject to applicable law.

With regard to the proposed amendment to Rule 3a71-6, the Commission generally will make requests for a substituted compliance determination public, subject to requests for confidential treatment being submitted pursuant to any applicable provisions governing confidentiality under the Exchange Act.

G. Request for Comment

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C.

3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In addition, would we would appreciate any comments related to our Paperwork Reduction Act estimates with respect to the following:

- The number of counterparties with whom an SBS Entity would maintain a security-based swap portfolio.
- The number and proportion of security-based swap portfolios that would fall under each of the proposed thresholds for determining the frequency of the required portfolio reconciliations, with respect to both SBS Entity and non-SBS Entity counterparties.
- The hourly burden of conducting each portfolio reconciliation and the use of automated systems to perform this function, including those offered by third parties.
- The use of third parties to perform portfolio reconciliation and portfolio compression exercises, any upfront burdens associated with engaging a third party to perform these services, and the ongoing burdens associated with each exercise.
- The burdens associated with establishing and routinely updating all required policies and procedures.

The agency has submitted the proposed collections of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-28-18. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-28-18, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

VI. Economic Analysis

The Commission is sensitive to the economic effects of its rules, including the costs and benefits and the effects of its rules on efficiency, competition, and capital formation. Section 3(f)¹⁹⁸ of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2)¹⁹⁹ of the Exchange Act requires the Commission, when promulgating rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁰⁰

A. Broad Economic Considerations

Unlike some other types of securities transactions, a security-based swap typically gives rise to ongoing obligations between transaction counterparties during the life of the transaction, including payments contingent on specific events, such as a corporate default or a change in the price of an underlying reference asset (e.g., changes in price to the floating leg of a total return swap). Consequently, certain risk mitigation techniques, such as engaging in portfolio reconciliation at periodic intervals, exercising opportunities for portfolio compression, and ensuring that the terms of a transaction are fully documented, are important practices for assisting SBS Entities in effectively measuring and managing market and credit risk.

Credit risk refers to the probability of a financial loss due to a counterparty to a transaction failing to fulfill its financial obligations. In order to manage credit risk in the security-based swap context properly, a market participant

¹⁹⁸ 15 U.S.C. 78c(f).

¹⁹⁹ 15 U.S.C. 78w(a)(2).

²⁰⁰ See *id.*

should know the identity of each of its counterparties, the details of the obligations of each counterparty in each transaction into which the two have entered, and the value of those obligations (including for purposes of calculating margin or measuring outstanding exposure for risk management). The greater the number of counterparties and transactions, the complexity of those transactions, and the value of the outstanding obligations, the more important it becomes for each counterparty to have well-documented credit risk management policies.

The risks of the counterparties' failure to manage credit risk adequately may not become apparent until the onset of a financial crisis. Such a crisis occurred in the fall of 2008, when certain events threatened to freeze U.S. and global credit markets. The severity of that crisis has been partially attributed to poor risk management practices of financial firms and flawed supervisory oversight for certain financial institutions.²⁰¹

Shortcomings in credit risk management and documentation may be unobservable to counterparties and other market participants until a crisis occurs as it did in 2008; thus some benefits of compliance will accrue to the financial system as a whole while the ongoing direct costs are borne by the institution. If firms do not fully internalize the benefits of risk management, then they may underinvest. For example, shortcomings in documentation were reported to have created significant problems during the financial crisis that immediately preceded passage of the Dodd-Frank Act in connection with efforts by Barclays PLC to take over a portion of Lehman Brothers Holdings Inc.'s derivatives trades.²⁰² Shortcomings in the documentation of portfolio valuation methods and reconciliation of portfolio values were also exposed when, during bankruptcy proceedings, counterparties' valuations differed by hundreds of millions of dollars from the value of those same positions on the bankrupt entity's books.²⁰³

²⁰¹ See *Lessons of the Financial Crisis for Future Regulation of Financial Institutions*, at 3–4, IMF Policy Paper (Feb. 4, 2009), available at: <http://www.imf.org/external/np/pp/eng/2009/020409.pdf>; see also Sewall Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, N.Y. Times (Jan. 25, 2011), available at: http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=1.

²⁰² See Linda Sandler, *Lehman Derivatives Records a 'Mess,' Barclays Executive Says*, Bloomberg (Aug. 30, 2010), available at: <http://www.bloomberg.com/news/articles/2010-08-30/lehman-derivatives-records-a-mess-barclays-executive-says>.

²⁰³ See Satyajit Das, *In the Matter of Lehman Brothers*, 59 Wilmott 20–29 (May 2012).

Among other things, effective risk management requires the existence of sound documentation, periodic reconciliation of portfolios, rigorously tested valuation methodologies, and sound collateralization practices.²⁰⁴ More broadly, the President's Working Group on Financial Policy ("PWG") noted shortcomings in the OTC derivatives market as a whole during the financial crisis that immediately preceded passage of the Dodd-Frank Act. The PWG identified the need for an improved integrated operational structure supporting OTC derivatives, specifically highlighting the need for an enhanced ability to manage counterparty risk through "netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades."²⁰⁵

The rules we are proposing today are designed to ensure that SBS Entities implement certain risk mitigation techniques by engaging in periodic portfolio reconciliation, maintaining policies and procedures for engaging in certain forms of portfolio compression exercises with each of their counterparties, and maintaining policies and procedures reasonably designed to ensure that they execute written trading relationship documentation with each of their counterparties prior to executing a security-based swap transaction. The proposed rules also would set minimum standards with respect to identifying the matters that must be addressed in the security-based swap trading documentation, and outline certain requirements related to the resolution of discrepancies, particularly those involving differences in the valuation of security-based swaps.²⁰⁶ In proposing

Disagreement over CDO valuation between AIG and its counterparties was also an issue around the same time. See *supra* note 15 and accompanying text.

²⁰⁴ See PriceWaterhouseCoopers, *Lehman Brothers' Bankruptcy: Lessons learned for the survivors*, Informational presentation for clients, (Aug. 2009), at 12–24, available at: http://www.pwc.com/en_JG/jg/events/Lessons-learned-for-the-survivors.pdf (2009), at 12–24, available at: http://www.pwc.com/en_JG/jg/events/Lessons-learned-for-the-survivors.pdf.

²⁰⁵ See The President's Working Group on Financial Markets, *Policy Statements on Financial Market Developments*, (Mar. 2008) ("PWG Report"), available at: http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolycystatemkt_turmoil_03122008.pdf (2008) ("PWG Report"), available at: http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolycystatemkt_turmoil_03122008.pdf.

²⁰⁶ The proposed rules also would (1) address the potential availability of substituted compliance in connection with those portfolio reconciliation, portfolio compression, and trading relationship documentation requirements and (2) add corresponding requirements to the Commission's recordkeeping rules that would require SBS Entities to make and keep records demonstrating

these rules, the Commission preliminarily believes that they will promote effective risk management practiced by security-based swap market participants in a number of important ways, which we discuss in greater detail below.

The Commission notes that, where possible, it has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from adopting these rules. In certain cases, however, the Commission is unable to quantify the economic effects. Crucially, many of the relevant economic effects, such as improved risk management and the value of Commission enforcement and oversight, are inherently difficult to quantify. In other cases, we lack the information necessary to provide reasonable estimates. For example, we lack data on prices charged by certain third-party service providers, current trading relationship documentation practices for entities and transactions not already subject to similar rules from other regulators, the fraction of outstanding positions that when reconciled will result in a dispute and the costs incurred by the participants in resolving the dispute. To the best of our knowledge, no such data is publicly available. Where the Commission is unable to quantify the economic effects, the discussion is qualitative in nature and includes, where possible, descriptions of the direction of these effects. The Commission requests data from commenters to help quantify these effects.

B. Economic Baseline

To assess the economic impact of the proposed risk mitigation rules, the Commission is using as a baseline the security-based swap market as it exists today, including applicable rules that have already been adopted, and excluding rules that have been proposed but not yet finalized. The analysis includes the statutory and regulatory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act, as well as rules adopted in, among others, the Business Conduct Standards Adopting Release²⁰⁷ and the Trade Acknowledgment and Verification Adopting Release.²⁰⁸ Moreover, because participants in the security-based swap market may also operate in other markets, particularly the swaps market, we have considered both the direct and indirect impact of

compliance with the new risk mitigation requirements.

²⁰⁷ See *supra* note 138.

²⁰⁸ See *supra* note 6.

rules that have been adopted by other regulators (e.g., the CFTC as well as foreign regulatory bodies) in formulating the baseline. Our understanding of the market is informed by available data on security-based swap transactions, though we acknowledge the data available to us limits the extent to which we can quantitatively characterize the market. Because this data does not cover the entire market, we have developed an understanding of market activity using a sample that includes only certain portions of the market.

Furthermore, the overall Title VII regulatory framework will have consequences for the ways in which security-based swaps are transacted which, in turn, will affect the activities addressed by these proposed rules. For example, the proposed rules generally do not apply to security-based swaps cleared through a registered clearing agency. Therefore, the scope of future mandatory clearing requirements may affect the overall level of security-based swap activity subject to the final rules ultimately adopted under the proposal, as well as the overall costs borne by SBS Entities.

1. Security-Based Swap Market Activity and Participants

a. Available Data From the Security-Based Swap Market

The Commission's understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market. Since this data does not cover the entire market, the Commission has analyzed market activity using a sample of transactions that includes only certain segments of the market. The Commission believes, however, that the data underlying this analysis provides reasonably comprehensive information regarding single-name CDS transactions and the composition of the participants in the single-name CDS market.

Specifically, the analysis of the state of the current security-based swap market is based on data obtained from the Depository Trust and Clearing Corporation ("DTCC") Derivatives Repository Limited Trade Information Warehouse ("DTCC-TIW"), especially data regarding the activity of market participants in the single-name CDS market during the period from 2006 to 2017.²⁰⁹ Although the definition of

"security-based swap" is not limited to single-name CDS,²¹⁰ single-name CDS contracts make up a majority of security-based swaps, and we believe that the single-name CDS data is sufficiently representative of the market to inform our analysis of the current security-based swap market. According to data published by the Bank for International Settlements ("BIS"), the global notional amount outstanding in single-name CDS was approximately \$4.6 trillion,²¹¹ in multi-name index CDS was approximately \$4.4 trillion, and in multi-name, non-index CDS was approximately \$343 billion.²¹² The total gross market value outstanding in single-name CDS was approximately \$130 billion, and in multi-name CDS instruments was approximately \$174 billion.²¹³ The global notional amount outstanding in equity forwards and swaps as of December 2017 was \$3.21 trillion, with total gross market value of \$197 billion.²¹⁴

Release, the Commission presented an analysis of TIW data for November 2006 through December 2014. While the exact numbers of various groups of transacting agents and account holders in that analysis differ from the figures reported in this section (for a longer time period), we do not observe significant structural differences in market participation. Compare 81 FR at 30102 (Tables 1 and 2) with Tables 1 and 2 below.

²¹⁰ While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). Additionally, the Commission explains below that data related to single-name CDS provides reasonably comprehensive information for the purpose of this analysis.

²¹¹ The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

²¹² See BIS, Semi-annual OTC derivatives statistics at December 2017, Table 10.1, available at: https://www.bis.org/statistics/d10_1.pdf (last accessed May 18, 2018).

²¹³ See *id.*

²¹⁴ These totals include swaps and security-based swaps, as well as products that are excluded from the definition of "swap," such as certain equity forwards. See *OTC, Equity-Linked Derivatives Statistics*, Table D8, available at: <https://www.bis.org/statistics/d8.pdf> (last accessed May 18, 2018). For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and therefore, do not fall within the security-based swap definition. See 15 U.S.C. 78c(a)(68)(A). See also Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are security-based swaps, potentially resulting in underestimation of the proportion of the security-based swap market represented by single-name CDS. Therefore, when measured on the basis of gross notional outstanding single-name CDS contracts appear to constitute roughly 59% of the security-based swap market. Although the BIS data reflects the global OTC derivatives market, and not

The Commission further notes that the data available from TIW does not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties;²¹⁵ and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW single-name CDS data should provide sufficient information to permit the Commission to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.²¹⁶

b. Affected SBS Entities

Final SBS Entity registration rules have been adopted, but compliance is not yet required. Therefore, we do not have data on the actual number of SBS Entities that will register with the Commission, or the number of persons associated with registered SBS Entities. The Commission has elsewhere estimated that up to 50 entities may register with the Commission as security-based swap dealers, and up to five additional entities may register as major security-based swap participants,²¹⁷ and these estimates remain unchanged.

Firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the

just the U.S. market, the Commission has no reason to believe that these ratios differ significantly in the U.S. market.

²¹⁵ Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.*, where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, we have assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, we have assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, the Commission has classified accounts as "U.S. counterparties" when they have reported a registered office location in the United States. The Commission notes, however, that this classification is not necessarily identical in all cases to the definition of U.S. person under Rule 3a71-3(a)(4).

²¹⁶ The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide the Commission with additional measures of market activity that will allow us to better understand and monitor activity in the security-based swap market. See Regulation SBSR Adopting Release, 81 FR at 53545.

²¹⁷ See, e.g., Registration Adopting Release, 80 FR at 49000.

²⁰⁹ In prior releases, the Commission has examined data for other time periods. For example, in the Business Conduct Standards Adopting

security-based swap dealer *de minimis* thresholds and trigger registration requirements for intermediated transactions with a gross notional amount of approximately \$2.9 trillion, approximately 55% of the gross notional intermediated by the top five dealer accounts.²¹⁸

These dealers transact with hundreds or thousands of counterparties. Approximately 21% of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2017.²¹⁹ Another 25% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 29% transacted with 100 to 500 unique accounts; and 25% of these accounts intermediated security-based swaps with fewer than 100 unique counterparties in 2017. The median dealer account transacted with

495 unique accounts (with an average of approximately 570 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with two dealer accounts (with an average of approximately three dealer accounts) in 2017.

c. Other Market Participants

In addition to dealers, thousands of other participants appear as counterparties to security-based swap contracts in our sample, and include, but are not limited to, investment companies, pension funds, private funds, sovereign entities, and industrial companies. We observe that most non-dealer users of security-based swaps do not engage directly in the trading of swaps, but trade through banks, investment advisers, or other types of firms acting as dealers or agents. Based on an analysis of the counterparties to trades reported to the TIW, there are

2,110 entities that engaged directly in trading between November 2006 and December 2017.²²⁰

As shown in Table 1 below, close to three-quarters of these entities (DTCC-defined “firms” shown in TIW, which we refer to here as “transacting agents”) were identified as investment advisers, of which approximately 40% (about 30% of all transacting agents) were registered as investment advisers under the Advisers Act.²²¹ Although investment advisers are the vast majority of transacting agents, the transactions they executed account for only 12.8% of all single-name CDS trading activity reported to the TIW, measured by number of transaction-sides (each transaction has two transaction sides, *i.e.*, two transaction counterparties). The vast majority of transactions (83.3%) measured by number of transaction-sides were executed by ISDA-recognized dealers.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2017, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share (percent)
Investment Advisers	1635	77.5	12.8
-SEC registered	658	31.2	8.6
Banks	262	12.4	3.4
Pension Funds	29	1.4	0.1
Insurance Companies	42	2.0	0.2
ISDA-Recognized Dealers ²²²	17	0.8	83.3
Other	125	5.9	0.2
Total	2,110	100.0	100

Principalholders of CDS risk exposure are represented by “accounts” in the TIW.²²³ The staff’s analysis of these accounts in TIW shows that the 2,110 transacting agents classified in Table 1 represent 13,137 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type

and whether they are represented by a registered or unregistered investment adviser.²²⁴ For instance, banks in Table 1 allocated transactions across 349 accounts, of which 20 were represented by investment advisers. In the remaining instances, banks traded for their own accounts. Meanwhile, ISDA-

recognized dealers in Table 1 allocated transactions across 91 accounts. Private funds are the largest type of account holders that we were able to classify, and although not verified through a recognized database, most of the funds

²¹⁸ The Commission staff analysis of DTCC Derivatives Repository Limited Trade Information Warehouse transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

²¹⁹ Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

²²⁰ These 2,110 entities, which are presented in more detail in Table 1, *infra*, include all DTCC-defined “firms” shown in TIW as transaction counterparties that report at least one transaction to TIW as of December 2017. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. *See, e.g.*, Dealing Activity Adopting

Release, 81 FR 8602, fn.43. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC’s Investment Adviser Public Disclosure database, and a firm’s public website or the public website of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA website.

²²¹ *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is established by an investment adviser that transacts on the endowment’s behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

²²² For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG,

Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g.*, <https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf>.

²²³ “Accounts” as defined in the TIW context are not equivalent to “accounts” in the definition of “U.S. person” provided by Exchange Act rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

²²⁴ Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority as well as investment advisers that are exempt reporting advisers under Section 203(l) or 203(m) of the Investment Advisers Act.

we were not able to classify appear to be private funds.²²⁵

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2017

Account holders by type	Number	Represented by a registered investment adviser	Represented by an unregistered investment adviser	Participant is transacting agent ²²⁶			
Private Funds	3,857	1,973	51%	1,859	48%	25	1%
DFA Special Entities	1,319	1,262	96%	37	3%	20	2%
Registered Investment Companies	1,159	1,082	93%	73	6%	4	0%
Banks (non-ISDA-recognized dealers)	349	20	6%	8	2%	321	92%
Insurance Companies	301	196	65%	34	11%	71	24%
ISDA-Recognized Dealers	91	0	0%	0	0%	91	100%
Foreign Sovereigns	83	63	76%	3	4%	17	20%
Non-Financial Corporations	75	52	69%	4	5%	19	25%
Finance Companies	20	11	55%	0	0%	9	45%
Other/Unclassified	5,883	3,745	64%	1,887	32%	251	4%
All	13,137	8,404	64%	3,905	30%	828	6%

d. Outstanding Positions

Our analysis here focuses on outstanding positions in single-name CDS. As we have previously noted, although the definition of a security-based swap is not limited to single-name CDS, we believe that the single-name CDS data is sufficiently representative of the market and therefore can directly inform the analysis of the state of the current security-based swap market.²²⁷ In 2017, there were 1,534,753 single-name CDS transactions reported to DTCC–TIW, of which 1,036,155 were transactions with a clearing agency as a counterparty.²²⁸ Currently, security-based swap transactions are generally negotiated

and executed bilaterally, typically with a dealer as one of the counterparties. Indeed, based on our analysis of DTCC–TIW data for 2017, more than 99% of single-name CDS transactions have an ISDA-recognized dealer as a counterparty, and 31% of transactions are between two ISDA-recognized dealers.²²⁹

As of December 30, 2017 there were 360,473 outstanding positions (with a gross notional value of \$4.196 trillion) in single-name corporate CDS of which 252,108 positions (\$2.095 trillion) did not include a central counterparty (“CCP”) as one of the counterparties. Of the 252,108 positions, 158,674 positions (\$1.383 trillion) were between two

market participants the Commission expects will register as SBS Entities, based on an analysis of DTCC–TIW data.²³⁰ In addition, 90,559 positions (\$0.684 trillion) were between an expected SBS Entity and a market participant not expected to register as an SBS Entity and 2,875 (\$0.028 trillion) were between two participants not expected to register as SBS Entities.

If transactions are examined instead, there were 383,212 price-forming transactions in calendar-year 2017 (with an aggregate gross trade size of \$5.304 trillion) in single-name corporate CDS of which 175,600 transactions (\$4.321 trillion) did not include a CCP as one of the counterparties. Of those 175,660

²²⁵ For the purposes of this discussion, “private fund” encompasses various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds. There remain over 5,800 DTCC accounts unclassified by type. Although unclassified, each account was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

²²⁶ This column reflects the number of participants who are also trading for their own accounts.

²²⁷ While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). In the Cross-Border Proposing Release, we explained that we believed that data related to single-name CDS was reasonable for purposes of this analysis; such transactions appear to constitute roughly 82% of the security-based swap market as measured on a notional basis. See Cross-Border Proposing Release, 78 FR at 31120 n. 1301. None of the commenters to that release disputed these assumptions, and we therefore continue to believe that, although the BIS data reflect the global OTC derivatives market, and not just the U.S. market, these ratios are an adequate representation of the U.S. market.

Also consistent with our approach in that release, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS (including CDS based on narrow-based security indices) as we do not currently have sufficient information to identify the relative volumes of index CDS that are either swaps or security-based swaps.

²²⁸ For the purposes of this analysis, we estimate there were approximately 1.53 million single-name CDS transactions in 2017, of which approximately 1.04 million were transactions with a clearing agency as a counterparty. In addition to CDS, security-based swap products include equity swaps, such as total return swaps on single names and swaps based on narrow-based security indices. The Commission currently lacks comprehensive data on equity swaps, including data on transaction volumes and notional amounts. While there were more than 1.53 million security-based swap transactions in 2017, we do not currently have sufficient information to precisely identify the number of transactions beyond those that were single-name CDS. However, while recognizing that average notional transaction amounts for equity and multi-name CDS may differ from average notional transaction amounts for CDS, our estimate (using data from 2015) that single-name CDS constitute roughly 82% of the security-based swap market implies that there were approximately 337,000 security-based swap transactions in 2017 in

addition to the approximately 1.53 million single-name CDS transactions we identify in the DTCC–TIW data, or 1.87 million total security-based swap transactions. Note that our estimate that single-name CDS constitutes roughly 82% of the security-based swap market is based on notional transaction amounts rather than transaction counts; in using this figure to estimate the total number of security-based swap transactions, we have assumed that the average notional amount is the same across single-name CDS, multi-name CDS, and equity swaps.

²²⁹ For the purpose of this analysis, the reference to “ISDA-recognized dealers” means those dealers identified by ISDA as belonging to the G14 or G16 dealer group during the period. This group includes: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. See, e.g., <https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf>. See also Aldasoro, Inaki, and Torsten Ehlers, 2018, The Credit Default Swap Market: What a Difference a Decade Makes, BIS Quarterly Review June 2018, Graph 2, available at: https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf. https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf. https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf, Graph 2.

²³⁰ See *supra* Section VI.B.1.b for current estimates of the number of SBS Entities.

transactions, 75,119 transactions (\$1.695 trillion) were between two expected SBS Entities, 99,370 transactions (\$2.245 trillion) were between an expected SBS Entity and a participant not expected to register, and 1,171 transactions (\$0.382 trillion) were between two participants not expected to register as SBS Entities.

Further analysis of the data reveals that of the 24 expected SBS Entities with outstanding positions as of December 30, 2017, 10 are not U.S. persons and may be subject to similar requirements as those being proposed here by foreign regulators. We note that the data available to us from DTCC-TIW does not encompass those CDS positions that both: (i) Do not involve U.S. counterparties;²³¹ and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, we believe that the DTCC-TIW data provides sufficient information to identify the types of market participants active in the security-based swap market and the general pattern of transactions within that market.²³² We find that of the outstanding positions on December 30, 2017, 317,854 positions (\$1.661 trillion) include at least one expected SBS Entity, 3,037 (\$0.018 trillion) are between non-U.S. domiciled expected SBS Entities and 60,948 (\$0.489 trillion) are between a non-U.S. domiciled expected SBS Entity and a participant not expected to register as an SBS Entity.

2. Current Portfolio Reconciliation Practices

While the Commission does not have data on current portfolio reconciliation practices of security-based swap market participants,²³³ certain market

²³¹ We note that DTCC-TIW's determinations as to the domicile of a counterparty or reference entity may not reflect our definition of "U.S. person" in all cases. Our definition of "U.S. person" follows the definition used in the Commission's June 2014 release where it, among other things, adopted rules and guidance regarding the application of the certain Title VII definitions in the cross-border context. See Application of "Security-Based Swap Dealer" and "Major-Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47277, 47303 (Aug. 12, 2014 (republication)) ("Cross-Border Adopting Release").

²³² The challenges we face in estimating measures of current market activity stems, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide us with appropriate measures of market activity. See Regulation SBSR Adopting Release, 80 FR at 14699-700.

²³³ Although the Commission does not have information on the number of valuation discrepancies between counterparties in SBS

participants we expect will register as SBS Entities are already subject to similar requirements from other regulators. In particular, those entities that are also registered with the CFTC as Swap Entities are subject to CFTC rules on portfolio reconciliation. These rules require Swap Entities to reconcile their swap portfolios with one another and to provide counterparties who are not registered as Swap Entities with regular opportunities for portfolio reconciliation.²³⁴ The Commission has reviewed these rules and preliminarily believes that, other than as expressly noted above in Section I.B, they are substantively identical to the rules we are proposing today.²³⁵

Further, SBS Entities that are domiciled outside of the U.S. may be subject to similar requirements of regulators from their home jurisdiction. For example, entities subject to Chapter VII, Article 13 of EU Regulation No 149/2013 already must comply with portfolio reconciliation requirements similar to those under the proposed rules. The EU regulations require all counterparties to agree on arrangements under which portfolios shall be reconciled before entering into an OTC derivative contract. Furthermore, the frequency of portfolio reconciliation under those regulations depends on both whether either counterparty is a "financial counterparty" or a "non-financial counterparty" (each as defined in European regulations), and the number of outstanding contracts between the counterparties.

In addition to regulations that may apply to certain SBS Entities that are either dually registered with the CFTC as Swap Entities or subject to similar portfolio reconciliation rules in other jurisdictions, portfolio reconciliation forms a part of current market practices. In particular, ISDA publishes a set of 'best practices' for its members for the OTC derivatives collateral process that

markets, a June 2017 survey on dealer financing noted that two-fifths of survey respondents reported that the volume of valuation disputes increased somewhat over the September 2016 to June 2017 period. Small net fractions of dealers responded that the volume, duration, and persistence of mark and collateral disputes had increased in OTC derivatives, especially in foreign exchange and interest rate contracts. Three-fifths of dealers responded that, on average, it takes more than two days but less than a week to resolve a mark and collateral dispute on VM. One-third indicated two days or fewer. See Yesol Huh, Division of Research and Statistics, Federal Reserve Board, *The June 2017 Senior Credit Officer Opinion Survey on Dealer Financing Terms*, available at: https://www.federalreserve.gov/data/scoos/files/scoos_201706.pdf.

²³⁴ See 17 CFR 23.502 (Portfolio reconciliation).

²³⁵ See, e.g., *supra* Section I.B.2 for a discussion of similarities and differences in approach to the definition of material terms that must be reconciled.

addresses, among other things, portfolio reconciliation of non-cleared OTC derivatives.²³⁶ These 'best practices' include written agreement between counterparties as to the terms of the reconciliation and reconciliation tolerances, and also recognize both the CFTC and EU rules pertaining to portfolio reconciliation.

3. Current Portfolio Compression Practices

While the Commission does not have data on current portfolio compression practices of security-based swap market participants, certain SBS Entities are already subject to similar compression requirements in other contexts similar to the situation involving portfolio reconciliation. Specifically, SBS Entities that are also registered with the CFTC as Swap Entities are subject to CFTC rules on portfolio compression. As discussed above, the Commission has reviewed those rules and preliminarily believes that they are, other than as expressly noted above in Section I.C, substantively identical to the rules we are proposing today.

Further, SBS Entities that are domiciled outside of the U.S. may be subject to similar requirements from regulators in their home jurisdiction. For example, entities subject to Chapter VII, Article 14 of EU Regulation No 149/2013 already must comply with portfolio compression requirements. Under these requirements any entity that has 500 or more non-cleared OTC derivative contracts with any one counterparty must have procedures in place to regularly (at least twice a year) analyze the possibility of conducting a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. The EU regulations differ from these proposed rules in a few important ways, including their application to all OTC derivative positions, not just security-based swaps, as well as the minimum frequency of compression exercises. Moreover, both financial and non-financial counterparties are required under the EU regulations to ensure that they are able to provide "a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate."

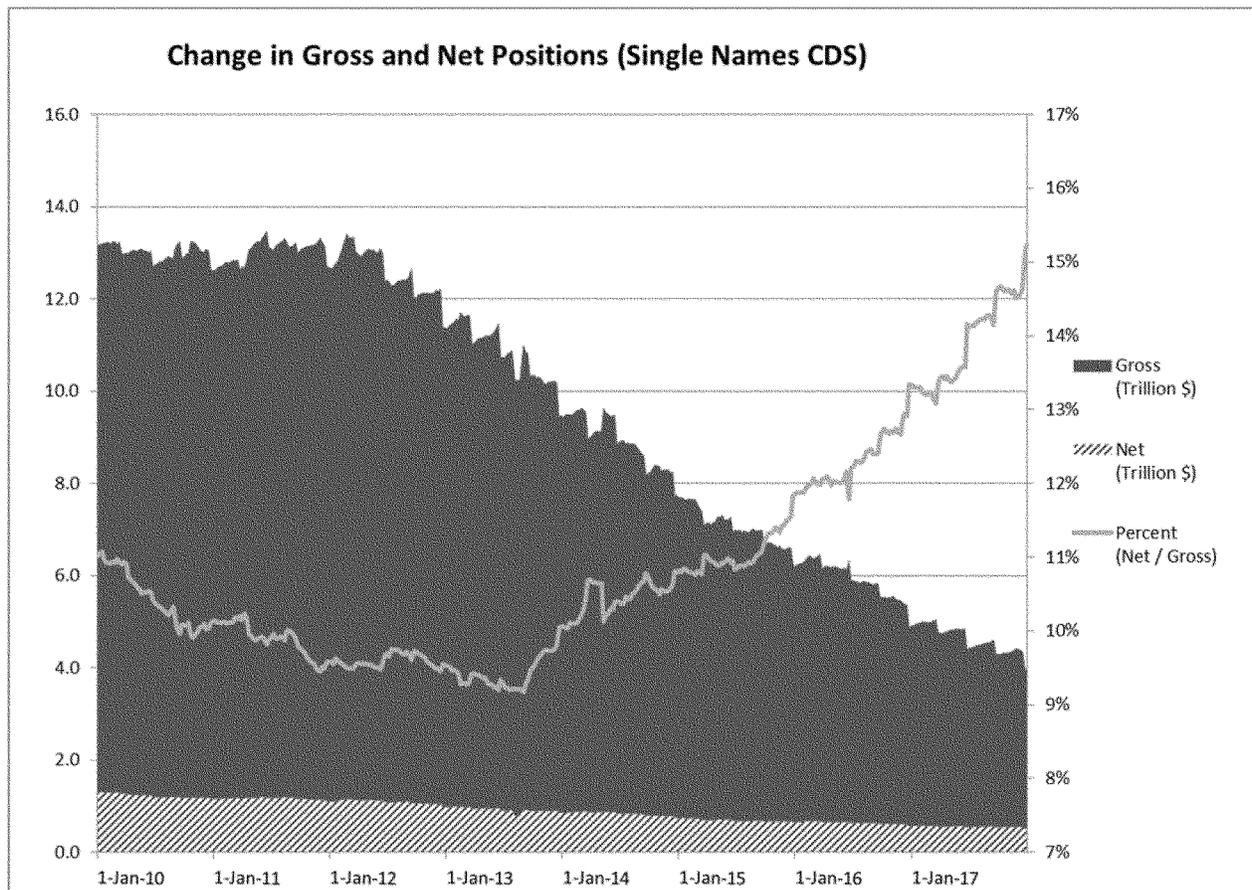
²³⁶ See ISDA, 2013 Interim Updated Best Practices for the OTC Derivatives Collateral Process, Best Practices 10.1-10.6 (Oct. 23, 2013), available at: <https://www2.isda.org/attachment/NjA3NQ==/2013%20ISDA%20Best%20Practices%20for%20the%20OTC%20Derivatives%20Collateral%20Process%20-%20FINAL.pdf> ("ISDA Collateral Best Practices").

In addition to regulations that may apply to certain SBS Entities that are either dually registered with the CFTC as Swap Entities or subject to similar portfolio compression rules in other jurisdictions, portfolio compression forms a part of current market practices. The ISDA Collateral Best Practices also includes a best practice that addresses portfolio compression, explaining that trades that are subject to industry-wide trade-reducing events should be removed from the portfolio on the day the trade-reducing event occurs and that this should be in agreement with governing documentation for the applicable risk reducing process.²³⁷

Although we lack data on current portfolio compression practices of individual SBS market participants, the importance of portfolio compression is illustrated by the scope of its use among

security-based swap market participants.²³⁸ In March 2010, DTCC explicitly attributed the reduction in the gross notional value of the credit derivatives in its warehouse to industry supported portfolio compression.²³⁹ Using data from TriOptima, the BIS reports CDS portfolio compression rates as high as 25% of notional outstanding in the first half of 2008.²⁴⁰ Compression volumes fell steadily over the following years due, in part, to falling transaction volumes and the rise of central clearing.²⁴¹ TriOptima, as well as other firms, continue to offer compression services, and the Commission preliminarily believes that the fact that market participants continue to find it worthwhile to pay for such services lends support to the argument that market participants view portfolio compression as a valuable tool.

The chart below illustrates the opportunities for portfolio compression between 2010 and 2017 for single-name security-based swaps.²⁴² As the gap between gross and net notional values widens, the opportunities for portfolio compression increase. Over our reference period, however, the difference between gross and net notional values has declined. For instance, in 2010, the percentage, which captures the ratio of net to gross notional value, was 11.0%, but this number has been gradually increasing through December 30, 2018 when it was 15.2%. Smaller ratios indicate greater opportunities for portfolio compression; however, as shown in the chart below, based on changes in gross and net notional value over time, unexploited opportunities for compression are diminishing.²⁴³



²³⁷ See ISDA Collateral Best Practices, *supra* note 236, Best Practice 8.4.

²³⁸ The data available to the Commission with respect to portfolio compression does not allow for enumeration of the actual participants which participate in such practices; however, inferences regarding the scope can be drawn from the magnitude of the reduction in the gross notional value of the credit derivatives.

²³⁹ See DTCC Press Release, *DTCC Trade Information Warehouse Completes Record Year Processing OTC Credit Derivatives*, (Mar. 11, 2010).

Notably, beginning in August 2008, ISDA encouraged compression exercises for CDS by selecting the service provider and defining the terms of service.

²⁴⁰ See Aldasoro, Inaki, and Torsten Ehlers, 2018, *The Credit Default Swap Market: What a Difference a Decade Makes*, BIS Quarterly Review June 2018, Graph 1 panel 2 and accompanying text, available at: https://www.bis.org/publ/qrpdf/r_qt1806b.pdf. In March of 2010, the staff of the FRBNY estimated that since 2008 nearly \$50 trillion gross notional of CDS positions has been eliminated through

portfolio compression. See FRBNY OTC Derivatives Report, *supra* note 62.

²⁴¹ *Id.*

²⁴² The chart below includes only gross and net notional of single-name security-based swaps. The inclusion of index security-based swaps could expand potential compression opportunities available to SBS Entities.

²⁴³ The result is likely driven by banks and securities firms. See Aldasoro, Inaki, and Torsten Ehlers, 2018, *supra* note 240, Graph 5.

It is possible that market participants may already be taking advantage of portfolio compression opportunities. However, the Commission does not infer that the entirety of the reduction in the gap between gross and net notional values is due to portfolio compression exercises. Other plausible explanations for the reduction in the gross notional value of security-based swaps include both fewer and/or smaller new transactions, expiration of existing positions without rollover into new positions, and loss or consolidation of market participants throughout time. Due to limitations of the data available to the Commission, it is infeasible to distinguish the overall effect of portfolio compression exercises on the reduction in the gross notional value of the security-based swap market from the alternative explanations presented above.

4. Current Trading Relationship Documentation Practices

Memorializing the specific terms of the security-based swap trading relationship and security-based swap transactions between counterparties is prudent business practice and, in fact, many market participants already use standardized documentation. Examination of the use of ISDA Master Agreements (the measure of trading relationship documentation available to the Commission in the data provided by DTCC-TIW) shows that the percentage of transactions with these agreements declines from 78.2% in 2008 to 34.1% in 2017, with the peak occurring in 2010 (96.1%). However, as trading relationship documentation may be different when the counterparty is a CCP, an analysis of documentation on aggregate security-based swap transactions (both cleared and uncleared) may be misleading. With the introduction of ICE Clear Credit in 2009, the percentage of cleared transactions has increased over time, thus a seemingly more relevant measure to look at is the frequency of use of ISDA Master Agreements for uncleared transactions. Approximately 99% of all uncleared transactions are reported (by DTCC-TIW) as using trading relationship documentation (in the form of ISDA Master Agreements) in 2017 compared to 78.2% in 2008. Accordingly, the Commission generally believes that many, if not most, market participants currently execute and maintain trading relationship documentation of the type required by the proposed rules in the ordinary course of their businesses, including documentation that contains several of

the terms that would be required by the proposed rules.

Finally, and similar to the discussion regarding the reconciliation and compression, SBS Entities that are also registered with the CFTC as Swap Entities are subject to CFTC rules requiring the use of trading relationship documentation. As discussed above, the Commission has reviewed those rules and preliminarily believes that they are, other than as expressly noted above in Section I.D, substantively identical to the rules we are proposing today.

C. Economic Costs and Benefits, Including Impact on Efficiency, Competition, and Capital Formation

In this section we first discuss the expected effects of the proposed rules on efficiency, competition, and capital formation, focusing particularly on the risk-mitigation benefits that stem from the use of portfolio reconciliation, expanding opportunities for portfolio compression, and improvements in documentation. We then turn our discussion to additional costs and benefits, including compliance costs and alternatives considered of the proposed rules.

1. Effects on Efficiency, Competition, and Capital Formation

Risk mitigation rules have the potential to affect efficiency, competition, and capital formation in the security-based swap market, primarily through a reduction in operational, market, and credit risks that accompany outstanding security-based swap positions. In addition, the substituted compliance framework may provide additional effects that are distinct from the broader market impacts that are described below. As with the benefits and costs, we believe that several of the effects described below only occur to the extent that current market practices do not already conform to our proposed rules.

a. Broad Market Effects

In the release adopting final rules requiring SBS Entities to provide trade acknowledgments and to verify those trade acknowledgments with their counterparties to security-based swap transactions, the Commission explained the importance of confirming trades in a timely manner, noting that confirmation of the terms of a transaction is essential for SBS Entities “to effectively measure and manage market and credit risk.”^{244 245} In this

regard, portfolio reconciliation addresses many of these same issues, but unlike the confirmation process, which occurs at the outset of a transaction, reconciliation operates throughout the life of the transaction.²⁴⁶

Failure to periodically conduct portfolio reconciliation may cause errors and disputes over the terms of a transaction that may exist to go undetected, leading to errors in measurement and management of market and credit risks associated with particular transactions. More generally, timely portfolio reconciliation will provide counterparties with accurate information that will enable them to evaluate their own risk exposure in a timely manner. Efficient and cost-effective risk management may conserve resources and free up capital that can be deployed in other asset classes, promoting risk-sharing and efficient capital allocation. In addition, cost-effective risk management may reduce the overall costs of financial intermediation, allowing market participants to increase lending and other capital formation activities.

Similarly, periodic portfolio reconciliation and improved standards for transaction documentation may contribute to broader market stability, particularly during periods of distress. Disagreement as to one or more material terms of a transaction or inadequate documentation could hinder timely and efficient settlement of security-based swap transactions, particularly in the case of a credit event on a reference entity on which many different counterparties have, in the aggregate, a large notional outstanding exposure. During periods of financial distress, uncertainty about terms, value, and documentation of outstanding transactions could contribute to liquidity and cash shortfalls that threaten the stability of the financial system. Thus, to the extent that the proposed rules reduce uncertainty about outstanding transactions, we expect reduced risk of uncertainty about the credit risk of potential counterparties, particularly during a financial crisis.

Finally, to the extent that portfolio reconciliation requirements differ from current market practices, the proposed rules have the potential to affect competition across multiple dimensions. If the costs of portfolio reconciliation, portfolio compression, and complying with transaction documentation rules for security-based swap transactions are largely fixed (*i.e.*, the costs come from establishing infrastructure and systems necessary to

²⁴⁴ See Trade Acknowledgment and Verification Adopting Release, 81 FR at 39833.

²⁴⁵ See *supra* Section I.B.1.

²⁴⁶ See *id.*

perform portfolio reconciliation and portfolio compression and comply with documentation requirements) rather than varying with the number of transactions or positions outstanding, smaller dealers intermediating a smaller number of trades may have a larger burden placed on them; larger dealers, on the other hand, may be able to spread the costs over a greater number of trades or positions, with a lower average cost of complying with these rules. Similarly, the costs of establishing an infrastructure to comply with these requirements may create a barrier to entry for market participants wishing to establish a SBS dealer business.²⁴⁷

b. Substituted Compliance

As discussed above, if the Commission has made a positive substituted compliance determination with respect to a particular foreign regulatory regime, SBS Entities operating in that jurisdiction may be able to satisfy their Title VII risk mitigation requirements by complying with similar requirements of the foreign financial regulatory system. Substituted compliance would be available only for SBS Entities who are not U.S. persons.

The Commission is proposing to amend its rules to make substituted compliance potentially available to the portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in order to minimize the likelihood that SBS dealers are subjected to potentially duplicative or conflicting regulation. The Commission preliminarily believes that duplicative regulations that achieve comparable regulatory outcomes increase the compliance burdens on market participants without corresponding increases in benefits. By decreasing the compliance burden for foreign SBS dealers active in the U.S. market, the availability of substituted compliance could encourage foreign firms' participation in the U.S. market, increasing the ability of U.S. firms to access global liquidity, and reducing the likelihood that liquidity would fragment along jurisdictional lines. Such participation and access to liquidity

²⁴⁷ The Commission does not expect that this effect would extend to major SBS participants, which are by definition the largest non-dealer participants in the security-based swap market. As described in the economic baseline, out of more than 4,000 security-based swap market participants, we expect at most five to register as major SBS participants. These entities maintain substantial positions in security-based swaps, as defined in the Intermediary Definitions Adopting Release, and the Commission expects these entities have sufficient resources and infrastructure to comply with portfolio reconciliation and documentation requirements.

might result in increased competition between both U.S. and foreign intermediaries without compromising the regulatory benefits intended by the applicable risk mitigation rules.

2. Portfolio Reconciliation

Disputes related to confirming the terms of a swap, as well as swap valuation disputes, have long been recognized as a significant problem in the OTC derivatives market. The Commission preliminarily believes that the ability to determine definitively the value of a security-based swap at any given time is an important component of many of the OTC derivatives market reforms contained in the Dodd-Frank Act and is a component of sound risk management practices.²⁴⁸ Security-based swap valuation is also crucial for determining capital and margin requirements applicable to SBS Entities and therefore plays a primary role in risk mitigation for uncleared security-based swaps. Portfolio reconciliation is considered an effective means of identifying and resolving these disputes at a time and in a manner that will be least disruptive to the counterparties and the broader financial system.

Parties may dispute valuations of thinly traded security-based swaps where there is not agreement on valuation methodologies or the source for formula inputs. Many of these security-based swaps are thinly traded either because of their limited liquidity or because they are simply too customized to have comparable counterparts in the market. As many of these security-based swaps are valued by dealers internally by "marking-to-model," their counterparties may dispute the inputs and methodologies used in the model. As uncleared security-based swaps are bilateral, privately negotiated contracts, on-going security-based swap valuation for purposes of initial and variation margin calculation and security-based swap terminations or novations, also has been largely a process of on-going negotiation between the parties. The inability to agree on the value of a security-based swap became especially acute during the financial crisis that immediately preceded passage of the Dodd-Frank Act when there was widespread failure of the market inputs needed to value many security-based swaps.²⁴⁹

²⁴⁸ See ISDA Collateral Best Practices, *supra* note 236, Section 10.

²⁴⁹ The lack of liquidity in markets for mortgage-backed securities led to wide disparities in the valuation of CDS referencing mortgage-backed securities (especially collateralized debt obligations). Such wide disparities led to large collateral calls from dealers on AIG, hastening its

a. Requirements

The Commission is proposing rules and interpretations that generally would require each SBS Entity (1) to engage in portfolio reconciliation with counterparties who are also SBS Entities at periodic intervals based on the number of outstanding transactions with the counterparty and (2) to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation with counterparties who are not SBS Entities, also at periodic intervals based on the number of outstanding transactions with the counterparty.²⁵⁰

The Commission is proposing to vary the proposed portfolio reconciliation requirement based on the particular type of counterparty with which the SBS Entity transacts. For transactions between two SBS Entities, the proposed rules would require the two sides to engage in portfolio reconciliation at frequencies that are based on the size of the security-based swap portfolio between the two parties.²⁵¹ In addition to the requirements regarding the frequency of the reconciliation, proposed Rule 15Fi-3(a)(1) would require the two SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.

To the extent that the two SBS Entities identify a discrepancy, the proposed rule would require the parties to take certain steps. First, proposed Rule 15Fi-3(a)(4) would require the two sides to resolve immediately any discrepancy in a material term, whether identified directly as part of the portfolio reconciliation or otherwise. Second, proposed Rule 15Fi-3(a)(5) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a

downfall. See CBS News, "Calling AIG? Internal Docs Reveal Company Silent About Dozens of Collateral Calls," June 23, 2009, available at: http://www.cbsnews.com/stories/2009/06/23/cbsnews_investigates/main5106672.shtml; See also Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, Chapter 8, available at: <https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

²⁵⁰ Pursuant to proposed Rule 15Fi-3(d), the new requirements regarding portfolio reconciliation would not apply to a clearing transaction (*i.e.*, a security-based swap that has a clearing agency as a direct counterparty). See *supra* note 58 and accompanying text.

²⁵¹ See proposed Rule 15Fi-3(a).

portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified. As a condition to this requirement, however, proposed Rule 15Fi-3(a)(5) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to identify how the SBS Entity will comply with any variation margin requirements under Section 15F(e) of the Exchange Act²⁵² and any related regulations pending resolution of the valuation discrepancy. Finally, proposed Rule 15Fi-3(a)(5) would clarify that for purposes of the requirement to resolve valuation discrepancies within five business days of being identified, a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy.²⁵³

Separately, with respect to transactions between an SBS Entity and a counterparty that is not an SBS Entity, proposed Rule 15Fi-3(b) would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation as set forth in the rule.²⁵⁴ This is in contrast to proposed Rule 15Fi-3(a), which expressly requires portfolio reconciliation with respect to transactions where both counterparties are SBS Entities.

Proposed Rule 15Fi-3(b) contains a number of requirements regarding the contents of the policies and procedures required therein, as they relate to reconciliation with non-SBS Entities, which are largely consistent with the requirements imposed directly on the parties under proposed Rule 15Fi-3(a). Specifically, proposed Rule 15Fi-3(b)(3) provides that such policies and procedures must require that the portfolio reconciliation be performed no less frequently than: (1) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter and (2) once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.

In addition, proposed Rule 15Fi-3(b)(4) requires each SBS Entity to establish, maintain, and follow written procedures reasonably designed to

resolve any discrepancies in the valuation or a material term of each security-based swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is not an SBS Entity within five days.²⁵⁵

Finally, proposed Rule 15Fi-3(c) would require each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within:

- three business days, if the dispute is with a counterparty that is an SBS Entity, or
- five business days, if the dispute is with a counterparty that is not an SBS Entity.

Such notification would be required to be in a form and manner acceptable to the Commission, and would also be required to be sent to any applicable prudential regulator (*i.e.*, for any SBS Entity that is also a bank, to its bank regulator).²⁵⁶

For the security-based swap market to operate efficiently and to reduce credit and operational risk between counterparties, the Commission preliminarily believes that, although the frequency of portfolio reconciliation depends on the number of positions with a counterparty, reconciliation should occur by position because terms may vary across positions with the same counterparty. By identifying and managing mismatches in key economic terms and valuation for individual transactions across an entire portfolio, these rules are intended to require a process in which risk between counterparties can be identified and reduced.

b. Benefits

Reconciliation is beneficial not only to the parties involved but also to the markets as a whole. By identifying and managing disputed key economic terms or valuation for each transaction across a portfolio, an entity's counterparty credit risk and operational risk can be diminished. By requiring a systematic reconciliation process, as well as policies and procedures related to portfolio reconciliation between counterparties, SBS Entities will be able

to better identify and correct problems in a timely manner in their post-execution processes (including confirmation) in order to reduce the number of disputes and improve the integrity and efficiency of their internal processes. Accordingly, expanding the universe of participants subject to the reconciliation requirements can help to reduce the risk bilateral markets may pose to the broader financial system.

As discussed above, because shortcomings in credit risk management and documentation may only become evident during a crisis, some benefits of portfolio reconciliation will accrue to the financial system as a whole while the ongoing direct costs are borne by the individual market participant. Therefore, in the absence of these rules, the level and frequency of portfolio reconciliation chosen by individual market participants may be less than what would be desired by all market participants in order to properly manage risks to the financial system.

In addition, the Commission preliminarily believes that the proposed tiering of obligations, whereby the frequency of the portfolio reconciliation would be based on the number of outstanding transactions with the applicable counterparty, represents a reasonable attempt to calibrate the costs to the benefits expected from reconciling a person's security-based swap portfolio at regular intervals. In this respect, those benefits would be expected to rise for larger—and often more complex—portfolios that may represent a greater potential for loss than a smaller, less complex portfolio.

The Commission preliminarily believes that, given the expected benefits of making the frequency of portfolio reconciliation a function of the size of a portfolio with a particular counterparty, setting the frequency of reconciliation identical to that adopted by the CFTC will provide additional benefit for SBS Entities that are also registered with the CFTC as Swap Entities. In particular, harmonizing the frequency of reconciliation for swaps and SBS should reduce implementation cost and reduce operational complexity.

Similarly, the Commission notes that the EC has adopted portfolio reconciliation requirements for the EU that are similar to those proposed by the Commission in this release. The Commission preliminarily believes that aligning its portfolio reconciliation requirements with those in other major security-based swap markets will benefit SBS Entities by avoiding the imposition of disparate compliance and operational policies and procedures.

²⁵² 15 U.S.C. 78o-10(e).

²⁵³ This 10% threshold would apply on a transaction-by-transaction basis, and not on a portfolio level.

²⁵⁴ See proposed Rule 15Fi-3(b).

²⁵⁵ Similar to the requirement in paragraph (a) of the proposed rule for portfolio reconciliation with counterparties that are either SBS dealers or major SBS participants, proposed Rule 15Fi-3(b)(4) provides that a difference between the lower valuation and the higher valuation of less than 10% of the higher valuation need not be deemed a discrepancy for purposes of that paragraph. See *supra* note 39 and accompanying text (discussing the 10% threshold in the context of Rule 15Fi-3(a)(5)).

²⁵⁶ See *supra* Section I.B.6.

Moreover, proposed Rule 15Fi-3(a)(2) provides that portfolio reconciliation may be performed either on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of the proposed rule. Under this approach, the process for selecting a third-party service provider—or the actual identity of the service provider—should be included in the written agreement between the two sides setting forth the terms of the portfolio reconciliation process.

In the absence of periodic portfolio reconciliation, if the counterparties to a security-based swap transaction are not in agreement with respect to each of the terms of the transaction that may affect each party's rights and obligations, any such difference could lead to complications at various points throughout the trade.²⁵⁷ These discrepancies could be exacerbated if they remain undetected until such times as the parties become obligated to perform on their requirements under the contract. Such discrepancies could be particularly problematic if they are discovered during a period of financial stress for the market participant.²⁵⁸ Thus, portfolio reconciliation may help to mitigate the possibility of a discrepancy unexpectedly affecting performance by ensuring that the parties are and remain in agreement with respect to all of the material terms of the security-based swap transaction.

Regular reconciliation of all portfolios is a process to reduce counterparty credit exposure and operational risk and help prevent disputes from arising. The rule should promote market integrity and reduce risk by establishing procedures that will promote legal certainty concerning security-based swap transactions, assist with the early resolution of valuation disputes, reduce operational risk, and increase operational efficiency.

The proposed rules may have differential benefits for smaller market participants. Smaller market participants may not have the bargaining power necessary to compel larger counterparties to coordinate on portfolio reconciliation. Since SBS Entities, absent a mandate, are likely to focus risk management resources on larger counterparties, the ability of smaller counterparties to require the necessary cooperation from their counterparties who are SBS Entities will be improved. Reduced uncertainty concerning material terms and valuation methodologies could reduce the risks to

these smaller participants for using SBS for hedging market risk to which they may be exposed.

Portfolio reconciliation is particularly relevant with respect to terms related to the valuation of the instrument. Unresolved discrepancies regarding the value of a security-based swap can lead to, among other things, active disputes between counterparties with respect to the amount of margin that must be posted or collected, as well as errors and other complications that may result in significant uncollateralized exposure in the uncleared security-based swap markets (or alternately, potentially inefficient overcollateralization). Accordingly, we preliminarily believe that requiring counterparties to clearly document the applicable processes and requirements for calculating and exchanging margin in connection with a security-based swap transaction is an important step in achieving this broader regulatory objective.

The notification requirement of proposed Rule 15Fi-3(c) would provide the Commission with information about disagreements over position values between counterparties. Valuation is one of the most fundamental elements for determining the economic rights and obligations of each of the counterparties to a security-based swap transaction. For example, market participants manage credit risks to their counterparties by exchanging margin with each other in an amount determined using the value of the underlying security-based swap. If those valuations are not accurate for any reason, such as human or system errors, problems with the valuation methodology, or an issue affecting the timeliness of the calculation, that error could result in one of the counterparties having an uncollateralized credit exposure and a potential for loss in the event of a default. We therefore expect that the notification requirement could assist the Commission in anticipating potential valuation problems that could ultimately lead to market disruption, and in identifying potential issues with respect to an SBS Entity's internal valuation methodology. As noted above, the CFTC has adopted a nearly identical requirement with the same \$20,000,000 threshold, and the Commission believes that divergence from that requirement could lead to additional costs for SBS Entities that are also registered with the CFTC as Swap Entities.²⁵⁹ Finally, as discussed above, the Commission preliminarily believes reconciliation may provide indirect benefits by

improving the accuracy of SDR data.²⁶⁰ As described above in Section I.B.2, the information that SBS Entities would initially be required to reconcile with their counterparties would include each term that is required to be reported to a registered SDR under Rule 901 under the Exchange Act.²⁶¹

c. Costs

The portfolio reconciliation rules the Commission is proposing today are similar to the corresponding CFTC rules for Swap Entities. As a result, the one-time costs to develop, test, and implement new procedures and technology that may be required in order to be compliant with the proposed rules are mitigated by the fact that many SBS Entities also are likely to be Swap Entities. These dually registered entities are likely to be familiar with these general requirements and have the infrastructure in place to comply with similar rules that apply to their swap business.

SBS Entities that are not also CFTC-regulated Swap Entities and that do not currently use an electronic platform or vendor service to conduct portfolio reconciliation will need to expend significant time and resources to modify the necessary systems to comply with proposed Rule 15Fi-3. Even those SBS Entities that do use electronic platforms or vendors services may find it necessary to make significant adjustments to comply with the rules. The Commission estimates a one-time upfront cost of approximately \$5–10 million for an SBS Entity that is not also a Swap Entity.²⁶² Although the Commission does not currently have cost data for either reconciliation performed in-house or by third-party service providers, and therefore cannot quantify these costs, the Commission preliminarily believes that the ongoing portfolio reconciliation cost would likely be a function of portfolio size and the availability of third party service providers.

In contrast, when commenting on the CFTC's then-proposed portfolio reconciliation rule, a third party provider of multilateral compression services stated that a large number of Swap Entities already regularly reconcile their portfolios with each other and with other entities and that

²⁶⁰ See SDR Adopting Release, 80 FR at 14528–48, for a discussion of the expected economic benefits accurate SBS data held at SDRs.

²⁶¹ See proposed Rule 15Fi-1(i)(1) (referencing 17 CFR 242.901).

²⁶² This estimate is based on an estimate supplied by ISDA to the CFTC in response to their proposed portfolio reconciliation rule. See CFTC Risk Mitigation Adopting Release 77 FR at 55952–3.

²⁵⁷ See *supra* note 14.

²⁵⁸ See *supra* note 203.

²⁵⁹ See *supra* Section I.B.6.

the increased frequency and inclusion of smaller portfolios as proposed should prove no obstacle to such entities.²⁶³ If SBS Entities have similar business practices, then this comment suggests start-up and on-going portfolio reconciliation costs could be small.

The Commission preliminarily believes that certain costs will arise despite the fact that an SBS Entity also may be registered with the CFTC as a Swap Entity, and therefore subject to similar rules already adopted by the CFTC. Such costs may include (i) increased costs to account for possible differences between the SEC and CFTC related to the terms considered to be material for purposes of the reconciliation requirement; (ii) the additional resources necessary to design, compose, and implement the required policies and procedures; (iii) the additional resources needed to comply with the dispute resolution timeframes; and (iv) the compilation and maintenance of applicable records. These costs, however, are by nature specific to each entity's internal operations; absent specific information from commenters, the Commission cannot provide reasonable estimations regarding the resources needed to comply.

The proposed rule also requires SBS Entities to agree in writing with each of their counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation. Accordingly, each counterparty to a SBS Entity subject to these rules would incur an upfront cost in implementing this requirement, particularly since the Commission would expect that such terms be agreed to in writing prior to, or contemporaneously with, the two parties executing any new security-based swap transaction. These costs would be mitigated if, once the parties have agreed in writing on the terms of the portfolio reconciliation for the first time, the two sides comply with this requirement for subsequent transactions by merely agreeing in writing to abide by the existing agreement regarding the reconciliation process. This practice could help to ensure that portfolio reconciliation begins without delay after execution of the transaction and is designed to minimize the number of

disagreements regarding the portfolio reconciliation process itself.

The Commission estimates that of the 55 market participants we expect to register as SBS Entities, approximately 35 will be dually-registered with the CFTC and may already have automated portfolio reconciliation systems in place. Thus, for these entities, the costs associated with modifying these existing systems to account for security-based swap reconciliations is expected to be minimal. For the remaining 20 SBS Entities which are not expected to be dually-registered with the CFTC, the anticipated personnel costs associated with setting up an automated portfolio reconciliation system per SBS Entity is \$58,795, or \$1,175,900 in aggregate.²⁶⁴ The Commission preliminarily believes that these costs would be a component of the upfront cost estimate of \$5–10 million discussed above.²⁶⁶ For each SBS Entity, we anticipate that approximately 190 hours per year will be required for reconciliation or a total of 10,450 hours across the 55 SBS Entities.²⁶⁷ With respect to reconciliations with non-SBS counterparties, the Commission estimates that an additional 227.5 hours per SBS Entity, or 12,512.5 hours in aggregate would be needed for automated portfolio reconciliation with these counterparties.²⁶⁸

²⁶⁴ This estimate is based on the following: [(Sr. Programmer (80 hours) × \$314 per hour) + (Sr. Systems Analyst (80 hours) × \$269 per hour) + (Compliance Manager (10 hours) × \$293 per hour) + (Director of Compliance (5 hours) × \$461 per hour) + (Compliance Attorney (20 hours) × \$346 per hour)] = \$58,795 per SBS Entity, or (\$58,795 × 20 SBS Entities) = \$1,175,900 in aggregate.

²⁶⁵ The hourly rates for internal professionals used throughout Sections VII.C.2.c, VII.C.3.c, and VII.C.4.c of the release are taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

²⁶⁶ See *supra* note 262 and associated text.

²⁶⁷ Each SBS Entity is anticipated to have counterparty relationships with approximately one-third of the other SBS market participants ($\frac{1}{3} \times 55 = 18.333$), which is rounded to 18 participants. Of those counterparty relationships, two are expected to have portfolios in excess of 500 positions, which would need to be reconciled daily (252 trading days per year), four would have between 50 and 500 positions, which would need to be reconciled weekly (52 weeks per year), and the remaining 12 would have less than 50 positions, which would need to be reconciled quarterly (four times per year). The Commission estimates that each portfolio reconciliation would require 30 minutes, 15 minutes per counterparty, through an automated system, thus the total anticipated reconciliation time would be [(2 counterparties × 252 trading days × 0.25 hours) + (4 counterparties × 52 weeks × 0.25 hours) + (12 counterparties × 4 quarters × 0.25 hours)] = 190 hours per SBS Entity, or (190 × 55 SBS Entities) = 10,450 hours in aggregate.

²⁶⁸ There are anticipated to be 13,137 total SBS counterparties, of which 55 are registered SBS

The Commission further estimates that the development and implementation of written policies and procedures as required under proposed Rule 15Fi-3 would impose an initial cost of \$702,232.50. Of the total 55 SBS Entities that would be subject to Rule 15Fi-3, 35 are estimated to be dually-registered with the CFTC, and are anticipated to already have policies and procedures in place with respect to reconciliation. The expected additional time to revise the existing policies and procedures for these SBS Entities is expected to be one hour per SBS Entity, for a cumulative 35 hours, costing \$429.50 per SBS Entity or \$15,032.50 in aggregate.²⁶⁹ For the remaining 20 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be \$687,200, or \$34,360 per SBS Entity.²⁷⁰ Once established, the Commission estimates that it would cost SBS Entities approximately \$944,900 or \$17,180 per SBS Entity to revise and maintain these policies and procedures.²⁷¹ Resolution of valuation discrepancies can be labor intensive. One objective of the proposed rule is to reduce the incidence of valuation discrepancies through the periodic reconciliations between security-based swap counterparties. It is unlikely, however, that the proposed rule will completely eliminate disputes related to

Entities, leaving 13,082 non-SBS market participants. See *supra* note 179. The Commission estimates that each SBS Entity will transact with approximately 350 of these non-registered counterparties. Of those 350 counterparties, 35 are expected to have portfolio positions in excess of 100 positions, which would require quarterly reconciliations, while the remaining 315 are expected to have positions of less than 100 security-based swaps, and therefore, would require annual reconciliation. The Commission estimates that each portfolio reconciliation would require 30 minutes through an automated system, thus the total anticipated reconciliation time would be [(35 counterparties × 4 quarters × 0.5 hours) + (315 counterparties × 1 time per year × 0.5 hours)] = 227.5 hours per SBS Entity, or (227.5 × 55 SBS Entities) = 12,512.5 hours in aggregate.

²⁶⁹ The estimate is based on the following: [(Compliance Attorney (30 minutes) at \$346 per hour) + (Director of Compliance (15 minutes) at \$461 per hour) + (Deputy General Counsel (15 minutes) at \$565 per hour)] = \$429.50 per hour per SBS Entity or (\$429.50 per hour × 35 SBS dually-registered Entities) = \$15,032.50.

²⁷⁰ The estimate is based on the following: [(Compliance Attorney (40 hours) at \$346 per hour) + (Director of Compliance (20 hours) at \$461 per hour) + (Deputy General Counsel (20 hours) at \$565 per hour)] = \$34,360 per SBS Entity or (\$34,360 × 20 SBS Entities that are not dually-registered) = \$687,200 in aggregate.

²⁷¹ The estimate is based on the following: [(Compliance Attorney (20 hours) at \$346 per hour) + (Director of Compliance (10 hours) at \$461 per hour) + (Deputy General Counsel (10 hours) at \$565 per hour)] = \$17,180 per SBS Entity or (\$17,180 × 55 SBS Entities) = \$944,900 in aggregate.

²⁶³ See Letter from Per Sjöberg, Executive Vice TriOptima AB to the CFTC, dated Feb. 28, 2011 at 2, available at: [http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30562&SearchText.28,2011 at 2, available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30562&SearchText.](http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30562&SearchText.28,2011%20at%20,available%20at%20http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30562&SearchText.)

valuation. The Commission lacks data on the fraction of positions that, when reconciled, will result in a dispute as well as the costs likely to be incurred resolving those disputes, and is therefore unable to quantify these costs. However, the Commission recognizes that the costs associated with resolution of these disputes is likely to be higher than costs for reconciliations in which disputes do not arise.

However, the Commission preliminarily believes that these costs may be mitigated by only requiring counterparties to address differences in valuation greater than 10%. These costs of reconciliation may be further mitigated by agreement between the counterparties to use a third party service provider to assist in resolving valuation discrepancies. Reconciliation of other terms is likely to be less costly as the terms of the agreement are unlikely to change over the life of the contract.

The 10% threshold was designed to both identify large deviations in valuations between SBS Entities, while not requiring those entities to devote significant effort to resolving minor valuation disputes. Further, this threshold is identical to that already adopted by the CFTC.²⁷² The Commission notes, however, that this 10% threshold is at the transaction level, rather than the entity level. While discrepancies could be random in nature, the risk exists that one counterparty could have systemic issues in valuation across its entire portfolio, thereby leading to discrepancies in valuation with one or several counterparties and throughout the portfolio. For example, if an entity's valuation model consistently undervalued each of its security-based swap positions by 9%, in aggregate, the overall level of risk could be substantial, even though it would not trigger a discrepancy event as currently defined by the 10% transaction level threshold. Further, since the Commission estimates that approximately 35 of the expected 55 SBS Entities are likely to be dually-registered with the CFTC and active in swap and security-based swap markets, these participants are likely to face higher costs when regulations differ.

The costs of resolving valuation disputes are expected to be mitigated, because the reconciliation requirements are expected to prevent disputes from arising in the first instance through the regular comparison of material terms and valuations. The Commission preliminarily believes that by requiring SBS Entities to reach agreement with

certain counterparties on the methods and inputs for valuation of each security-based swap, as required in connection with the trading relationship documentation requirements in proposed Rule 15Fi-5, the overall framework of these rules should assist SBS Entities in resolving valuation disputes within five business days. In addition, the Commission estimates that SBS Entities will spend an average of 24 hours per year to comply with the notification requirement of proposed Rule 15Fi-3(c) costing \$8,304 per SBS Entity or \$456,720 in aggregate.²⁷³

Lastly, portfolio reconciliation costs are also mitigated by virtue of the fact that cleared security-based swaps are not within the scope of the requirements of these rules. The Commission preliminarily believes that CCPs establish settlement prices for each cleared security-based swap every business day for margining purposes and this process is more appropriately addressed by rules governing a clearing agency's risk management practices.²⁷⁴ Because a large part of the security-based swap portfolios of SBS Entities may consist of cleared security-based swaps to which the reconciliation requirements will not apply, the sizes of the bilateral, uncleared portfolios (to which the requirement would apply) may be limited.²⁷⁵

d. Alternatives

The proposed rule creates a specific definition of "material terms" for purposes of determining what discrepancies must be resolved in connection with the portfolio reconciliation which includes each term required to be reported to an SDR, but then permits SBS Entities to exclude any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap during subsequent reconciliations. The Commission considered not providing a specific definition of "material terms" and allowing SBS Entities discretion in determining those terms that are relevant to the ongoing rights or

obligations of the parties or affect the valuation of the security-based swap.

The Commission has preliminarily concluded that the data required to be submitted to an SDR in connection with regulatory reporting requirements is an appropriate measure for determining which terms should be reconciled pursuant to proposed Rule 15Fi-3. The Commission also preliminarily believes that tying the definition of "material terms" to reporting requirements to an SDR could reduce the burdens on some SBS Entities by potentially allowing them to leverage the same electronic systems used for SDR reporting for purposes of the portfolio reconciliation requirements.

The portfolio size breakpoints and frequencies are consistent with those adopted by the CFTC for Swap Entities and are therefore likely to be familiar to those entities that are registered as both an SBS Entity and a Swap Entity. These are also the breakpoints adopted by the EC. Further, the Commission believes that alternative breakpoints based on the number of transactions which deviate from those adopted by the CFTC and the EC would likely impose additional costs on SBS Entities without any corresponding increases in material benefits to those participants.

Although the notion of breakpoints based on number of transactions previously has been accepted by the CFTC and other regulatory agencies, the Commission notes that breakpoints based on alternative measures could be considered. In particular, breakpoints for reconciliation could be categorized by either gross (or net) notional amounts of positions or the current market value of positions, and identified as levels or scaled by some measure such as the aggregate notional value of the market (for gross or net notional values) or the assets of the SBS Entity (if market values are used instead). Although the number of security-based swaps between counterparties is easy to capture, it may actually be misleading with respect to the complexity or magnitude of the risk between counterparties.

For instance, say two counterparties have over 500 transactions between them, but the average value of each transaction is only \$5 million notional value. The total exposure between the two counterparties would only be \$2.5 billion, but this portfolio would need to be reconciled daily due to the number of transactions. If, on the other hand, two counterparties have only 40 transactions, but the average value of each transaction is \$1 billion notional value, the overall exposure would be \$40 billion (16 times greater exposure

²⁷³ The estimate is based on the following: [Compliance Attorney (24 hours) at \$346 per hour] = \$8,304 per entity × 55 SBS entities = \$456,720.

²⁷⁴ See *supra* Section I.B.7.

²⁷⁵ Currently, there is no regulatory requirement in the United States to clear security-based swaps. As of December 2015, approximately 56% of the total volume of new trade activity in single-name security-based swap products had been cleared through ICE Clear Credit. Further, approximately 79% of index CDS transactions were centrally cleared as of December 2015 (see <https://www.isda.org/a/kVDDE/swapsinfo-q4-2015-review-final.pdf>); therefore, single-name security-based swaps potentially could be cleared at a similar rate.

²⁷² See 17 CFR 23.502 (portfolio reconciliation).

than the 500 transaction counterparties), but this portfolio would only be reconciled quarterly. Basing breakpoints on some measure other than the number of transactions may enable SBS Entities to better assess the overall level of counterparty credit risk as well as operational risk associated with their security-based swap portfolios. Setting aside these concerns, the Commission believes that breakpoints based on the number of transactions is likely to capture the complexity of SBS Entities' portfolios, and that reconciliations based on this dimension are likely to identify discrepancies in a timely manner. Further, given that the Commission estimates that approximately 35 of the expected 55 SBS Entities are likely to be dually-registered with the CFTC and active in both swap and security-based swap markets, this alternative could potentially impose additional costs due to differences in regulatory requirements.

The Commission has also considered alternatives to the requirement that valuation discrepancies exceeding 10% must be resolved within five days. The 10% threshold is consistent with the rule adopted by the CFTC for Swap Entities and, as a result, is likely to be familiar to those entities that are registered as both an SBS Entity and a Swap Entity. The Commission preliminarily believes that the proposed 10% threshold is high enough to prevent market participants from incurring costs to resolve small valuation differences that would have only a small effect on margin or other risk management practices, yet low enough to prevent difference in valuation from resulting in significant miscalculations in risk management.

As noted above, there are potential economic costs that could accrue to counterparties related to both the 10% threshold and the five business day resolution window. An alternative (albeit supplementary) approach would be an additional requirement of a valuation threshold related to the overall portfolio discrepancies, in aggregate and/or with individual counterparties. For instance, if the aggregate portfolio has valuation discrepancies of 5% or 10%, this could trigger a discrepancy event, even if the individual transaction-level discrepancies fall below the prescribed threshold as documented currently in the proposed rule. Relatedly, while the five business day window is narrow enough to potentially stem valuations from deviating for extended periods of time while still providing a horizon in which parties can work through their

valuation disputes, entities can face significant counterparty risk over seemingly short-term horizons. For relatively stable valuation disputes in which the value does not continue to deviate further from the agreed-upon level, then a five business day window is likely to be sufficient; however, a more compressed alternative horizon could be invoked when the discrepancies in value continue to widen between counterparties. The Commission preliminarily believes that the proposed five business day horizon is sufficient and serves as an upper-bound for which market participants to address and correct any material discrepancies that arise during reconciliation. Moreover, this approach is consistent with requirements from other regulators, and given the Commission's estimates on SBS Entities that are likely to be dually-registered with the CFTC, any differences in regulation would likely impose additional costs to those entities.

Finally, proposed Rule 15Fi-3(c) would require each SBS Entity to promptly notify the Commission of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency) if not resolved within:

- Three business days, if the dispute is with a counterparty that is an SBS Entity, or
- five business days, if the dispute is with a counterparty that is not an SBS Entity.

Such notification would be required to be in a form and manner acceptable to the Commission, and would also be required to be sent to any applicable prudential regulator (*i.e.*, for any SBS Entity that is also a bank, to its bank regulator).²⁷⁶

The Commission has considered as an alternative, requiring SBS Entities to make and keep records of valuation discrepancies that exceed \$20,000,000 rather than requiring that they be reported to the Commission. The Commission preliminarily concluded that the benefit of receiving an early warning of potential problems before they surfaced through an ordinary course of review of books and records justifies any additional cost imposed on SBS entities.

Proposed Rule 15Fi-3(d), the new requirements regarding portfolio reconciliation would not apply to a "clearing transaction" which is defined as a security-based swap that has a clearing agency as a direct counterparty.²⁷⁷ A clearing agency

means a clearing agency that is registered with the Commission pursuant to Section 17A of the Exchange Act and that provides central counterparty services for security-based swap transactions. The Commission considered as an alternative including transactions cleared at a foreign clearing agency that is not registered with the Commission within its definition of "clearing transaction" for the purposes of the proposed rule. The Commission preliminarily concluded that an approach that is similar to that taken by the Commission in other rules,²⁷⁸ as well as the approach taken by the CFTC,²⁷⁹ would reduce implementation and compliance costs.

The Commission has considered as an alternative, an alternative compliance mechanism that would allow a SBS Entity to be deemed in compliance with certain proposed rules regarding portfolio reconciliation if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC portfolio reconciliation rules. The Commission preliminarily concludes that differences between its proposed rules and rules adopted by the CFTC may provide certain benefits to SBS Entities and other market participants that would not be available under a rule that was identical to the corresponding CFTC rule. For example, the requirement in the proposed rule that each term required to be reported to a registered SDR under Rule 901 must be reconciled may facilitate the verification of transaction data by SDRs, which could address concerns raised by market participants and data repositories. Such benefits could be unavailable under an alternative compliance mechanism given that CFTC portfolio reconciliation rules do not require all of this information to be reconciled.²⁸⁰

3. Portfolio Compression

Portfolio compression is an important post-trade processing mechanism that can be an effective and efficient tool for the management of risk by security-based swap market participants. Portfolio compression is a mechanism whereby directionally opposite

²⁷⁸ See, *e.g.*, Trade Acknowledgement and Verification Adopting Release, 81 FR at 39839.

²⁷⁹ Specifically, CFTC Rule 23.502(c) provides that "[n]othing in this section shall apply to a swap that is cleared by a derivatives clearing organization." 17 CFR 23.502(c).

²⁸⁰ See *supra* Section I.E for a discussion of the proposed reconciliation rules and the verification of transaction data by SDRs. See also *supra* note 32 for a discussion of differences between CFTC and proposed Commission requirements concerning third party reconciliation.

²⁷⁶ See *supra* Section I.B.6.

²⁷⁷ See *supra* Section I.B.7.

transactions with substantially similar terms among two or more counterparties are terminated and, if any exposure remains, replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining offsetting transactions on the counterparties' books. Because portfolio compression participants are permitted to establish their own credit, market, and cash payment risk tolerances and to establish their own mark-to-market values for the transactions to be compressed, the process does not alter the risk profiles of the individual participants beyond a level acceptable to the participant. Portfolio compression is commonly acknowledged as useful risk management tool.²⁸¹

a. Requirements

The Commission is proposing rules and interpretations that generally would require each SBS Entity to establish, maintain, and follow written policies and procedures for engaging in certain forms of portfolio compression exercises with each of its counterparties. Depending on the number of counterparties, the portfolio compression exercise would be defined as either a "bilateral portfolio compression exercise" or as a "multilateral portfolio compression exercise."

Under proposed Rule 15Fi-4(a), SBS Entities would be required to establish, maintain, and follow written policies and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, when appropriate, with each counterparty that is also an SBS Entity.²⁸² For transactions with non-SBS Entities, the policies and procedures required under the proposed rule would require only that portfolio compression exercise would have to occur when appropriate and only if requested by any such counterparty.²⁸³

b. Benefits

As a mechanism for post-trade management of risk in security-based swaps, portfolio compression provides benefits not only to the counterparties in each transaction but also to the markets as a whole. A portfolio compression exercise permits firms to identify instances in which

directionally opposite transactions with similar terms can be terminated or replaced, with a smaller number of transactions with decreased notional value, reducing the overall risk, cost, and inefficiencies associated with maintaining offsetting transactions. As such, portfolio compression is recognized as an important risk management tool.²⁸⁴ By expanding the universe of participants required to maintain portfolio compression policies and procedures, credit risk in the uncleared security-based swaps market can be reduced and may provide benefits to the entire financial system.

Further, the termination of redundant security-based swap transactions through the portfolio compression process is likely to result in the potential reduction of both counterparty and operational risk at the SBS Entity level. The use of portfolio compression also could reduce the overall level of bilateral risk exposures, while leaving the net positions of market participants unaltered, thereby improving operational efficiency. Improvements in operational efficiency may arise due to fewer overall positions for each entity, a reduction in carried margin and variation margin calculations, and fewer (and potentially less frequent) portfolio reconciliations. This would also reduce the number of bilateral positions that would have to be resolved in the event of insolvency of a market participant. These reductions in risk and improvements in operational efficiency of SBS Entities could benefit the financial system as a whole, thereby potentially increasing the number of market participants as well as improving liquidity.

Although the costs of participating in portfolio reconciliation are fully internalized by each counterparty, the potential benefits, particularly for multilateral compression exercises, increase with the number of counterparties that participate. Under proposed Rule 15Fi-4(a), SBS Entities would be required to establish, maintain, and follow written policies

and procedures for periodically engaging in both bilateral portfolio compression exercises and multilateral portfolio compression exercises, in each case when appropriate, with counterparties that also are an SBS Entity.²⁸⁵ To the extent that an SBS Entity transacts with a counterparties that are not SBS Entities, the policies and procedures required under the proposed rule would require only that portfolio compression exercises occur when appropriate and only if requested by any such counterparty. In the absence of the proposed rules, some counterparties may not participate in compression activities reducing the potential benefits available to other counterparties and the financial system generally.

As noted in the economic baseline, the emergence of third-party vendors has provided portfolio compression services for security-based swaps. SBS Entities may be able to continue to benefit from the services of these third-party vendors to provide additional portfolio compression opportunities for these firms.

The proposed rule provides flexibility to security-based swap market participants with respect to portfolio compression. The Commission preliminarily believes that by not proposing prescriptive requirements, an SBS Entity would allow the counterparties flexibility in the manner in which they reduce the size of their security-based swap portfolios in light of each counterparty's unique risks and operations. Moreover, the proposed rules regarding bilateral offset have been designed to reflect the understanding by the Commission that firms may have legitimate economic and business reasons for maintaining fully offsetting security-based swap transactions. Certain portfolio compression exercises could result in adverse credit exposures to certain counterparties. For example, the results of a particular multilateral compression exercise may result in a credit exposure to a particular counterparty that exceeds credit exposure limits for that counterparty.

Thus, the Commission preliminarily believes that the policies and procedures should be flexible enough to allow an SBS Entity to take the most appropriate course of action with respect to managing its risks, while at the same time, encouraging SBS Entities to consider the risk mitigation possibilities of portfolio compression in a non-arbitrary manner and consistent with the purposes of Section 15F(i) of the Exchange Act. As such, proposed

²⁸¹ See <http://www2.isda.org/news/isda-publishes-paper-highlighting-achievements-in-portfolio-compression>.

²⁸² See proposed Rules 15Fi-4(a)(2) and (3).

²⁸³ See proposed Rule 15Fi-4(b). See also *supra* notes 70 and 71 and associated text.

²⁸⁴ For example, in 2008, the PWG identified frequent portfolio compression of outstanding trades as a key policy objective in the effort to strengthen the OTC derivatives market infrastructure. See PWG Report, *supra* note 205. Similarly, the 2010 staff report issued by the FRBNY outlined policy perspectives on OTC derivatives infrastructure and identified trade compression as an element of strong risk management and recommended that market participants engage in regular, market-wide portfolio compression exercises. See FRBNY OTC Derivatives Report, *supra* note 62. Since the years immediately following the 2008 financial crisis, compression outside of CCPs has been somewhat less common and has declined substantially from its 2008 peak. See *supra* note 240.

²⁸⁵ See *supra* Section I.C.

Rules 15Fi-4(a)(1) and (b) would require a firm's policies and procedures to address the termination of fully offsetting security-based swaps only "when appropriate."

Finally, the Commission notes that both the CFTC and the EC have adopted portfolio compression requirements that are substantially similar to those being proposed by the Commission in this release.²⁸⁶ By closely aligning portfolio compression requirements through consultation with the CFTC and with ESMA, the Commission preliminarily believes that SBS Entities will benefit from a largely unitary regulatory regime that does not require separate compliance and operational policies and procedures.

c. Costs

SBS Entities will necessarily have to design, compose, and implement policies and procedures to regularly evaluate compression opportunities with their counterparties as well as those opportunities offered by third parties. However, the Commission preliminarily believes that given the large risk management benefits available from the regular compression of offsetting trades—benefits including reduced risk and enhanced operational efficiency—SBS Entities already undertake regular portfolio compression exercises. For this reason and those discussed below, the Commission preliminarily believes that the relevant costs will primarily be the creation of policies and procedures.

The greater the level of standardization in security-based swaps, the less costly it becomes to identify compression opportunities. In April 2009, ISDA announced the implementation of the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol, known colloquially in the industry as the "Big Bang Protocol," which introduced a number of documentation changes to help standardize single-name CDS contracts.²⁸⁷ Among these changes were the introduction of standard coupon rates and standard effective dates. Following the standardization of single-name CDS, compression in this market segment increased.²⁸⁸ As that

standardization continues, we would expect that the cost of identifying appropriate compression opportunities should continue to fall. Using single-name corporate CDS data from DTCC-TIW discussed above, we find the percentage of new trades in North American Single-Name Corporate that have standardized coupons has risen from 95.2% in 2012 to 99.8% in 2017. The reduction in the number of roll-dates from four to two in order to both improve liquidity as well as to align with updates to CDS indices²⁸⁹ also may result in increased standardization and therefore may reduce the costs of identifying compression opportunities.

The Commission estimates that the development and implementation of written policies and procedures as required under proposed Rule 15Fi-4 would impose an initial cost of \$702,232.50 in aggregate. Of the 55 market participants the Commission expects will register as SBS Entities and be subject to Rule 15Fi-4, the Commission estimates that approximately 35 of these market participants are registered with the CFTC, and are anticipated to already have policies and procedures in place with respect to portfolio compression. The expected additional time to revise the existing policies and procedures for these SBS Entities is expected to be one hour per SBS Entity, for a cumulative 35 hours, costing \$429.50 per SBS Entity or \$15,032.50 in aggregate.²⁹⁰ For the remaining 20 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be \$687,200, or \$34,360 per SBS Entity.²⁹¹ Once established, the Commission estimates that it would cost

SBS Entities approximately \$944,900 or \$17,180 per SBS Entity to revise and maintain these policies and procedures.²⁹²

The Commission further estimates that an SBS Entity will devote approximately 124.17 hours per year for portfolio offsets and compression exercises (6,829.35 aggregate hours), a substantial portion of which will be automated, and some of which may be handled by third-party vendors.²⁹³ Similar to our discussion for portfolio reconciliation (Section VIII.C.2.c), the Commission expects that the costs of implementing portfolio compression exercises through an automated process will be minimal for those SBS Entities that are dually-registered with the CFTC, as many of those systems will already be in place. With respect to the remaining 20 SBS Entities that are not dually-registered, the Commission anticipates that any cost associated with implementing the portfolio reconciliation system may also account for the portfolio compression exercises that may periodically take place; therefore, the overall costs of portfolio compression systems should be minimal.

In terms of quantification of the costs of compression, the Commission also notes that there are a number of third-party vendors that provide compression services, and some of these providers may charge fees based on results achieved (such as number of swaps or security-based swaps compressed). Assuming that third-party vendors charge a fee directly related to the outcome of the compression exercise (as opposed to a fixed fee in whole or some portion thereof for portfolio compression activities), the direct costs of portfolio compression by third-party vendors would therefore likely be

BIS Quarterly Review (Dec. 2010), available at: http://www.bis.org/publ/qtrpdf/r_qt1012g.pdf ("TriOptima became the first company to offer CDS portfolio compression when it extended its TriReduce service from interest rate swaps to the CDS market in 2005. In the CDS market, TriReduce has compressed mainly portfolios of CDS indices and index tranches, but single names have accounted for an increasing share of its compression volumes since standardisation in 2009.").

²⁸⁹ See <http://www2.isda.org/asset-classes/credit-derivatives/single-name-cds-roll/>.

²⁹⁰ The estimate is based on the following: (((Compliance Attorney (30 minutes) at \$346 per hour) + ((Director of Compliance (15 minutes) at \$461 per hour) + ((Deputy General Counsel (15 minutes) at \$565 per hour)) = \$429.50 per hour per SBS Entity or (\$429.50 per hour × 35 SBS dually-registered Entities) = \$15,032.50.

²⁹¹ The estimate is based on the following: (((Compliance Attorney (40 hours) at \$346 per hour) + ((Director of Compliance (20 hours) at \$461 per hour) + ((Deputy General Counsel (20 hours) at \$565 per hour)) = \$34,360 per SBS Entity or (\$34,360 × 20 SBS Entities that are not dually-registered) = \$687,200 in aggregate.

²⁹² The estimate is based on the following: (((Compliance Attorney (20 hours) at \$346 per hour) + ((Director of Compliance (10 hours) at \$461 per hour) + ((Deputy General Counsel (10 hours) at \$565 per hour)) = \$17,180 per SBS Entity or (\$17,180 × 55 SBS Entities) = \$944,900 in aggregate.

²⁹³ The Commission estimates that each SBS Entity will transact with approximately 368 counterparties (18 SBS Entities and 350 non-SBS market participants). It is estimated that approximately one offset per year will take place between counterparties and it is expected to take five minutes to complete, for a total number of hours of $(2.5/60 \times 18 + 5/60 \times 350)$ or 29.92 hours per year per SBS Entity. Further, each SBS Entity is expected to conduct six bilateral compressions with SBS Entities and 350 bilateral compressions with non-SBS counterparties, each taking 15 minutes for total hours of $[(7.5/60 \times 6) + (15/60 \times 350)] = 88.25$ hours. Lastly, each SBS Entity is anticipated to complete 12 multilateral compressions each year, each taking 30 minutes for a total of 6 hours. Total time for each SBS Entity for portfolio compression exercises is estimated to be $(29.92 + 88.25 + 6) = 124.17$ hours, or 6829.35 hours (124.17 hours × 55 SBS Entities).

²⁸⁶ See *supra* note 7 and accompanying text.

²⁸⁷ See Press Release, ISDA Announces Successful Implementation of 'Big Bang' CDS Protocol; Determinations Committees and Auction Settlement Changes Take Effect (Apr. 8, 2009), available at: <https://www.isda.org/a/XS6EE/ISDA-Announces-Successful-Implementation-of-%E2%80%98Big-Bang%E2%80%99-CDS-Protocol-Determinations-Committees-and-Auction-Settlement-Changes-Take-Effect.docx>.

²⁸⁸ See Nicholas Vause, *Counterparty risk and contract volumes in the credit default swap market*,

directly related to the economic benefits of reduced counterparty and operational risk realized through the compression exercises. The Commission does not currently have pricing data for third-party service providers that offer portfolio compression services and so is unable to quantify the costs to market participants who make use of these services.

Many non-SBS Entities typically trade only in small volumes and on one side of a particular security-based swap, to create a synthetic position in the underlying asset or to hedge another position, for example. Such one-sided market positions reduce the opportunities to engage in periodic compression cycles. For SBS Entities that do not currently participate in compression cycles, there could be costs to modify the participant's risk systems and connectivity enhancements that would allow for sharing the necessary information required to identify compression opportunities and for the booking and processing of a large volume of security-based swaps in a short time period. Multilateral compression cycles are typically managed with automated tools to support tear-up and new trade creation that end-users usually do not possess, and the costs of obtaining such tools cannot be justified by the benefits. The rule does not require market participants to engage in mandatory compression cycles, but only to establish, maintain, and follow written policies and procedures for engaging in certain forms of portfolio compression exercises.

d. Alternatives

The proposed rule requires that SBS Entities establish, maintain, and follow written policies and procedures as they relate to certain forms of portfolio compression exercises with each of its counterparties. As such, the Commission is not proposing to mandate the specific contents of the policies and procedures created to comply with these rules.²⁹⁴ However, a number of more specific requirements for portfolio compression could be included. For example, the current proposal only requires policies and procedures that address compression to the extent requested by the counterparty rather than a more prescriptive requirement.²⁹⁵

Pursuant to the proposed Rule 15Fi-4, SBS Entities are required "periodically" to examine the

²⁹⁴ There is one exception to this statement, see *supra* note 72.

²⁹⁵ See *supra* Section I.C.3.

possibility for whether portfolio compression exercises can take place. While this provides flexibility to the counterparties in terms of the frequency with which rebalancing would have to be explored, it leaves open the possibility that market participants will suboptimally select the frequency with which portfolio compression exercises can occur, which could impose externalities on SBS counterparties as well as the financial system as a whole. As an alternative, the Commission has considered requiring a minimum frequency of analysis of portfolio compression exercises. For instance, at least twice a year, SBS Entities could conduct an analysis of the possibility of a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise, similar to those adopted by the EC.²⁹⁶ Given that portfolio compression has been identified to be a valuable and important tool for risk management, it is likely that many SBS Entities already have in place policies and procedures for periodic evaluation of compression possibilities, thus imposing a minimum standard could be burdensome and costly for firms to implement.

Relatedly, the frequency with which SBS Entities evaluate their prospects for portfolio compression opportunities could be related to the number of transactions between counterparties (as is required for portfolio reconciliation in proposed rule 15Fi-3). For instance, if counterparties have portfolios in excess of 500 transactions, an analysis of portfolio compression could be conducted quarterly, while SBS Entities with portfolios between 50 and 500 transactions, portfolio compression exercises could be explored twice a year. For counterparties with fewer than 50 transactions between them (or for portfolios with non-SBS Entities), portfolio compression exercises could be simply "periodically." This would allow counterparties to assess the counterparty credit risk at frequencies aligned with the complexities of their portfolios without incurring substantive additional costs of this increase in periodic evaluation of portfolio compression opportunities. The Commission has considered the costs and benefits to market participants of imposing policies and procedures related to portfolio compression based on the number of transactions between counterparties. However, it is likely that market participants expected to register as SBS Entities already have policies

²⁹⁶ See EU Regulation 149/2013, art. 14, 2013 O.J. 11, 22.

and procedures in place to evaluate portfolio compression opportunities with counterparties, and requiring alterations to these policies could be costly for these entities without corresponding benefits.

Proposed Rule 15Fi-4(c), the new requirements regarding portfolio compression, would not apply to a "clearing transaction", which is defined as a security-based swap that has a clearing agency as a direct counterparty.²⁹⁷ A clearing agency means a clearing agency that is registered with the Commission pursuant to Section 17A of the Exchange Act and that provides central counterparty services for security-based swap transactions. The Commission considered as an alternative including transactions cleared at a foreign clearing agency that is not registered with the Commission within its definition of "clearing transaction" for the purposes of the proposed rule. The Commission preliminarily concluded that an approach that is similar to that taken by the Commission in other rules,²⁹⁸ as well as the approach taken by the CFTC,²⁹⁹ would reduce implementation and compliance costs.

The Commission has considered as an alternative, an alternative compliance mechanism that would allow a SBS Entity to be deemed in compliance with certain proposed rules regarding portfolio compression if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC portfolio compression rules. The Commission preliminarily concludes that, as a practical matter, the rules are nearly equivalent, suggesting that any additional compliance cost arising from differences in these rules for an entity that is registered with both the CFTC and the Commission should be small. The Commission preliminarily believes that the differences that do exist (such as the proposed rule providing that requested compression by an entity that is not a security-based swap dealer or major security-based swap participant need only be conducted if appropriate³⁰⁰) may provide marginal benefits to SBS market participants (such as by preventing portfolio compression that is not appropriate given the particular circumstances of

²⁹⁷ See *supra* Section I.C.4.

²⁹⁸ See *supra* note 278.

²⁹⁹ Specifically, CFTC Rule 23.503(c) provides that "[n]othing in this section shall apply to a swap that is cleared by a derivatives clearing organization." 17 CFR 23.503(c).

³⁰⁰ See *supra* note 70 and accompanying text.

the trade and the counterparties to that trade).³⁰¹

4. Trading Relationship Documentation

OTC derivatives market participants typically have relied on the use of industry standard legal documentation, including master netting agreements, definitions, schedules, and confirmations, to document their security-based swap trading relationships. This industry standard documentation offers a framework for documenting the transactions between counterparties for OTC derivatives products.³⁰² The standard documentation is designed to set forth the legal, trading, and credit relationship between the parties and to facilitate netting of transactions in the event that parties have to close-out their position with one another or determine credit exposure for margin and collateral management. Notwithstanding the standardization of such documentation, some or all of the terms of the master agreement and other documents are subject to negotiation and modification.

a. Requirements

The Commission is proposing rules and interpretations that generally would require each SBS Entity to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it executes written trading relationship documentation with its counterparties prior to, or contemporaneously with, executing a security-based swap. The security-based swap trading relationship documentation is required to be in writing and to include all material terms governing the trading relationship between counterparties.

Further, the proposed rule would also require that the security-based swap trading relationship documentation include credit support arrangements.³⁰³ One of the key elements of Title VII reforms was to ensure that uncleared OTC derivatives were appropriately collateralized, thus the documentation of processes for calculating and

exchanging margin in connection with security-based swaps helps to achieve the broader regulatory objective.³⁰⁴

The proposed rules also would establish minimum standards with respect to identifying the matters that must be addressed in the security-based swap trading documentation, and outline certain requirements related to the resolution of discrepancies, particularly those involving differences in the valuation of security-based swaps. In the event that discrepancies in valuation arise, the proposed rule requires that counterparties must provide documentation for either an alternative method for determining value of the security-based swap or documentation on the resolution process for such disputes.

The proposed rule also requires that counterparties to the security-based swap provide information on their legal status, particularly in the event of liquidation, as well as to disclose certain information of a security-based swap accepted for clearing by a clearing agency, in order to reduce any potential confusion regarding the status of the trade following its acceptance and novation at the clearing agency. Lastly, proposed Rule 15Fi-5 requires a periodic independent audit to identify any material deficiencies in the trading relationship documentation policies and procedures.

b. Benefits

Inadequate or incomplete documentation of open security-based swap transactions could, in some cases, result in collateral and legal disputes between the two counterparties, thereby exposing both sides to significant counterparty credit risk. By way of contrast, adequate documentation between counterparties offers a framework for establishing the trading relationship between the parties from the outset of the transaction, which should minimize both the number and magnitude of potential disputes.

Further, the proposed rule provides particular guidance with respect to policies and procedures documenting the valuation of security-based swaps. Although having policies and procedures regarding trading relationship documentation in place is important for all aspects of the transaction, the valuation of the transaction and how it affects margin requirements on an on-going basis is critical for managing both counterparty credit as well as operational risk. Pursuant to proposed Rule 15Fi-5, counterparties are required to provide

information on the valuation methods, procedures, rules, and inputs (within limits so as to not reveal private information regarding proprietary valuation models), while further stipulating that either alternative valuation methods or valuation discrepancy resolutions are detailed in the trading relationship documentation. These benefits are both complemented by, and accrue to, the portfolio reconciliation process contemplated by proposed Rule 15Fi-3. That is, comprehensive and accurate documentation of a transaction may contribute to a smoother reconciliation process by reducing the possibility of discrepancies; and any discrepancies that may still arise could subsequently be identified and resolved through reconciliation.

As discussed above, because shortcomings in credit risk management and documentation may only become evident during a crisis, some benefits of complying with these rules will accrue to the financial system as a whole while the ongoing direct costs are borne by the individual market participant. Therefore, in the absence of these rules, trading relationship documentation practices employed by individual market participants may be less thorough than would be desired by all market participants in order to properly manage risks to the financial system. However, the widespread use of standard documentation mitigates both the potential benefit and costs of the proposed rule.

c. Costs

Market participants will likely incur ongoing costs associated with the rules concerning trading relationship documentation. Market participants will have to (1) negotiate and document all terms of each trading relationship; (2) design, compose, and implement policies and procedures reasonably designed to ensure the execution of security-based swap trading relationship documentation, including valuation documentation; (3) obtain documentation from counterparties who are claiming the end user exception to clearing; and (4) periodically audit documentation and keep records and/or make reports as required under these rules.

The Commission estimates that the initial burden to negotiate and draft trading relationship documentation will be \$4,741,680 per SBS Entity, or \$260,792,400 in aggregate across the 55

³⁰¹ The corresponding CFTC compression rule applicable to transactions with counterparties that are not SBS Entities does not contain the caveat that any form of compression or offset covered by the applicable policies and procedures would only need to occur "when appropriate." See *supra* note 70. We solicit comment on this difference. See *supra* Section I.C.5.

³⁰² One commonly used form of the industry standard documentation is the ISDA Master Agreement and related definitions, schedules, and confirmations specific to particular asset classes. As noted in Section VI.B.4, over 99% of uncleared security-based swap transactions use an ISDA Master Agreement as reported in DTCC-TIW.

³⁰³ See *supra* Section I.C.2

³⁰⁴ 15 U.S.C. 78c-5(f).

SBS Entities.³⁰⁵ The Commission further estimates that the development and implementation of written policies and procedures as required under proposed Rule 15Fi-5 would impose an initial cost of \$702,232.50 in aggregate. Of the total 55 SBS Entities as expected by the Commission that would be subject to Rule 15Fi-5, 35 are anticipated to be registered concurrently with the CFTC, and are anticipated to already have policies and procedures in place with respect to portfolio compression. The expected additional time to revise the existing policies and procedures for these Entities is expected to be one hour per Entity, for a cumulative 35 hours, costing \$429.50 per Entity or \$15,032.50 in aggregate.³⁰⁶ For the remaining 20 SBS Entities, the Commission estimates that it will take approximately 80 hours per entity to establish the written policies and procedures. The costs for these SBS Entities will be \$687,200, or \$34,360 per SBS Entity.³⁰⁷ Once established, the Commission estimates that it would cost SBS Entities approximately \$944,900 or \$17,180 per SBS Entity to revise and maintain these policies and procedures.³⁰⁸ Lastly, proposed Rule 15Fi-5 requires periodic independent audits of the trading relationship documentation. The Commission estimates that the costs associated with these audits will be \$794,880 per SBS Entity, or \$43,718,400 in aggregate.³⁰⁹

Memorializing the specific terms of the security-based swap trading

³⁰⁵ Each SBS Entity is anticipated to be counterparty to 18 other SBS Entities and 350 non-SBS market participants, for a total of 368 counterparties. The initial negotiation and draft in expected to take 30 hours per counterparty. The estimation is as follows: [(Compliance Manager (15 hours) × \$346) + (Director of Compliance (7.5 hours) × \$461) + (Deputy General Counsel (7.5 hours) × \$565)] × 368 counterparties = \$4,741,680 per SBS Entity, or (\$4,741,680 × 55 SBS Entities) = \$260,792,400 in aggregate.

³⁰⁶ The estimate is based on the following: [(Compliance Attorney (30 minutes) at \$346 per hour) + (Director of Compliance (15 minutes) at \$461 per hour) + (Deputy General Counsel (15 minutes) at \$565 per hour)] = \$429.50 per hour per SBS Entity or (\$429.50 per hour × 35 SBS dually-registered Entities) = \$15,032.50.

³⁰⁷ The estimate is based on the following: [(Compliance Attorney (40 hours) at \$346 per hour) + (Director of Compliance (20 hours) at \$461 per hour) + (Deputy General Counsel (20 hours) at \$565 per hour)] = \$34,360 per SBS Entity or (\$34,360 × 20 SBS Entities that are not dually-registered) = \$687,200 in aggregate.

³⁰⁸ The estimate is based on the following: [(Compliance Attorney (20 hours) at \$346 per hour) + (Director of Compliance (10 hours) at \$461 per hour) + (Deputy General Counsel (10 hours) at \$565 per hour)] = \$17,180 per SBS Entity or (\$17,180 × 55 SBS Entities) = \$944,900 in aggregate.

³⁰⁹ The estimate is based on the following: [368 counterparties × 10 hours per Audit × Auditor (\$216 per hour)] = \$794,880 per SBS Entity, or (\$794,880 × 55 SBS Entities) = \$43,718,400 in aggregate.

relationship and security-based swap transactions between counterparties is prudent business practice and, in fact, many market participants already use standardized documentation.³¹⁰ Accordingly, the Commission preliminarily believes that many, if not most, market participants that are expected to register as SBS Entities currently execute and maintain trading relationship documentation of the type required by the proposed rules in the ordinary course of their businesses, including documentation that contains several of the terms that would be required by the proposed rules. Thus, the hour and dollar burdens associated with the security-based swap trading relationship documentation requirements may be limited to amending existing documentation to expressly include any additional terms required by the proposed rules. In addition the Commission anticipates that standardized security-based swap trading relationship documentation will eventually incorporate changes that may be necessary to comply with many of the requirements of this rule reducing the cost to individual security-based swap market participants.³¹¹

Proposed Rule 15Fi-5 also includes certain exceptions that are intended to mitigate costs incurred by market participants while preserving the risk mitigating benefits of thorough trading relationship documents. First, the proposed rule would provide an exception for security-based swaps executed prior to the date on which the SBS Entity is required to be in compliance with the trading relationship documentation rule, as it may be costly and impractical to require SBS Entities to bring existing transactions into compliance with the proposed rules. The Commission notes that this exception may increase the likelihood of disputes in valuation with respect to such transactions, which will be subject to the portfolio reconciliation requirement of proposed Rule 15Fi-3 even though they are not subject to the documentation requirements of proposed Rule 15Fi-5. Such disputes could be costly to resolve and may lead to greater uncertainty with respect to counterparty credit risk.

³¹⁰ As noted in Section VI.B.4, as of 2015, the DTCC-TIW data shows that over 99% of SBS Entities use the ISDA Master Agreement.

³¹¹ In response to prior Dodd Frank Act related regulatory requirements, ISDA in partnership with third party providers, has created technology-based solutions enabling counterparties to modify OTC derivatives related documentation quickly and efficiently. See <http://www2.isda.org/dodd-frank-documentation-initiative/>.

The proposed rule further provides exceptions for any “clearing transaction”, which, pursuant to existing Rule 15Fi-1(c) under the Exchange Act, is defined as a security-based swap that has a clearing agency as a direct counterparty. Once a security is cleared, the transaction is primarily governed by the terms of the agreement between clearing member and the clearing agency. Lastly, the proposed rule would provide an exception for security-based swaps executed anonymously on a national securities exchange or an SBSEF, provided that these security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency that provides CCP services. This exception is intended to recognize that documentation requirements may be nearly impossible to fulfill within the context of cleared anonymous transactions.³¹²

d. Alternatives

The Commission has evaluated reasonable alternatives to the proposed rule on trading relationship documentation. One alternative would be that all SBS Entities are required to adhere to an industry-accepted standard form of trading documentation, instead of establishing policies and procedures related to documentation. It is unlikely that this alternative would materially alter the primary benefits of the rule, namely that of reducing disputes over documentation that could lead to increased counterparty risk, but could increase overall compliance costs without analogous increases in benefits, due to reduced operational flexibility.

Further, the proposed rule requires that SBS Entities undertake a periodic, independent audit to identify material weaknesses in its documentation policies and procedures. As proposed, there is flexibility on behalf of the SBS Entity as to how and when those audits occur. Alternatively, the Commission has considered limiting to only external auditors and requiring a once per year audit of trading relationship documentation. Although this alternative would not materially amend the primary benefits related to the audit of SBS Entities’ policies and procedures related to trading relationship documentation, the Commission anticipates that this alternative could increase compliance costs by reducing operational flexibility.

³¹² The exception with respect to security-based swap transactions on national exchanges or SBSEF is limited. See Section I.D.6 for a complete discussion of those limitations.

Proposed Rule 15Fi-5(a)(1)(ii) would provide an exception to the trading relationship documentations requirements for any “clearing transaction” which is defined as a security-based swap that has a clearing agency as a direct counterparty.³¹³ A clearing agency means a clearing agency that is registered with the Commission pursuant to Section 17A of the Exchange Act and that provides central counterparty services for security-based swap transactions. The Commission considered as an alternative including transactions cleared at a foreign clearing agency that is not registered with the Commission within its definition of “clearing transaction” for the purposes of the proposed rule. The Commission preliminarily concluded that an approach that is similar to that taken by the Commission in other rules,³¹⁴ as well as the approach taken by the CFTC,³¹⁵ would reduce implementation and compliance costs.

The Commission has considered as an alternative, an alternative compliance mechanism that would allow a SBS Entity to be deemed in compliance with certain proposed rules regarding trading relationship documentation if the SBS Entity is also registered as a swap dealer or major swap participant with the CFTC and is in compliance with the corresponding CFTC trading relationship documentation rules. The Commission preliminarily concludes that, as a practical matter, the rules are nearly equivalent, suggesting that any additional compliance cost arising from differences in these rules for an entity that is registered with both the CFTC and the Commission should be small. The Commission preliminarily believes that differences that do exist are necessary and appropriate. For example, to the extent that a transaction entered into on an anonymous basis on a national securities exchange or SBSEF that is then rejected for clearing but continues to exist, the Commission preliminarily believes that the counterparties to the ongoing security-based swap should have in place a written agreement on the terms of that transaction.³¹⁶

5. Recordkeeping Requirements

The Commission is also proposing rules that would modify existing Rules 17a-3 and 17a-4, as well as proposed

Rules 18a-5 and 18a-6 for the recordkeeping and reporting requirements applicable to SBS Entities. The proposed amendments would involve requiring each SBS Entity to make and keep current information relevant to portfolio reconciliation and portfolio compression exercises and to retain all security-based swap trading relationship documentation required to be created under proposed Rule 15Fi-5, as well as each policy and procedure created pursuant to proposed Rules 15Fi-3, 15Fi-4, and 15Fi-5.

a. Requirements

The Commission is proposing to amend Rule 17a-3 (which applies to SBS Entities that are also registered with the Commission as broker-dealers) and proposed Rule 18a-5 (which applies to SBS Entities that are not registered with the Commission as broker-dealers). Under these amendments, each SBS Entity would be required to make and keep records of each security-based swap portfolio reconciliation and portfolio compression exercise, which is believed to promote compliance with proposed Rules 15Fi-3 and 15Fi-4 as well as support SBS Entities in the event that disputes arise in relation to previous reconciliations or compressions. The proposed amendments would also require that SBS Entities make and keep records of valuation disputes in excess of \$20 million if not resolved within three (for SBS Entities) or five (for non-SBS counterparties) days.

The Commission also is proposing to amend Rule 17a-4 (which applies to SBS Entities that are also registered with the Commission as broker-dealers) and proposed Rule 18a-6 (which applies to SBS Entities that are not registered with the Commission as broker-dealers), which address record retention. All records made and kept under the proposed amendments to Rule 17a-3 and proposed Rule 18a-5 would need to be retained for at least three years. Further, all policies and procedures related to proposed Rules 15Fi-3 through 15Fi-5, all written agreements between counterparties on terms of portfolio reconciliation, and all security-based swap trading relationship documentation with counterparties would need to be retained until at least three years following the termination of said policies and procedures and/or documentation.

b. Benefits

In proposing these requirements, the Commission considered the potential benefits of improving the oversight, transparency, and documentation of

security-based swap activities. The amendments to Rules 17a-3 and 17a-4, and proposed Rules 18a-5 and 18a-6 are intended to facilitate effective oversight of SBS Entities, thus the benefits associated with the proposed amendments related to recordkeeping are beneficial not only to the SBS Entities, but also are expected to facilitate regulatory oversight.

Requiring retention of records related to portfolio reconciliation, portfolio compression, and trading relationship documentation for a minimum of three years provides SBS Entities with a well-established track record should disputes about terms of the security-based swap arise. The benefits of these proposed amendments, to the extent that they enhance existing practice, could reduce both counterparty credit risk as well as operational risk for the SBS Entities. Further, the proposed amendments are expected to facilitate examinations by the Commission of SBS Entities.

c. Costs

The Commission also recognizes that there will be costs associated with the new rules and rule amendments. Those costs include the costs of creating procedures to ensure that records are kept as required by the proposed rule amendments, and costs associated with ongoing record maintenance. As the recordkeeping requirements would be amendments to Rules 17a-3 and 17a-4, and proposed Rules 18a-5 and 18a-6; however, the incremental costs of compliance with these amendments is likely to be minimal.

The proposed Rules 15Fi-3 through 15Fi-5 would require that SBS Entities would establish and maintain written policies and procedures related to portfolio reconciliation, portfolio compression exercises, and trading relationship documentation. Further, SBS Entities are already required to comply with the retention of written policies and procedures with respect to Rule 15Fi-2 related to trade acknowledgement and verification, and should have recordkeeping systems previously instituted. Therefore, only minor modifications would need to be made in order to make the systems compliant with the proposed amendments regarding recordkeeping requirements for portfolio reconciliation, portfolio compression exercises, and trading relationship documentation.

Generally, the Commission does not expect the amendments to Rules 17a-3 and 17a-4, and proposed Rules 18a-5 and 18a-6 to create material burdens for registrants, although as noted above the Commission does expect that there will

³¹³ See *supra* Section I.D.6.

³¹⁴ See *supra* note 278.

³¹⁵ Specifically, CFTC Rule 23.504(a)(1)(iii) excludes from the written trading relationship documentation requirements “swaps cleared by a derivatives clearing organization.” 17 CFR 23.504(a)(1)(iii).

³¹⁶ See *supra* Section I.D.6.

be incremental costs related to complying with the proposed rule amendments.³¹⁷

d. Alternatives

The Commission has considered reasonable alternatives to the proposed amendments. In particular, the costs and benefits associated with the required recordkeeping horizon have been evaluated. Shorter horizons (of less than three years) would lessen the overall recordkeeping burden by reducing the retention requirements and corresponding storage of records. However, as it may take time for disputes, particularly in the event of liquidations to be fully settled, shorter horizons may lead to the elimination of relevant records prior to resolution. On the other hand, longer horizons for maintaining records could be costly with respect to storage and system requirements. However, longer record preservation would reduce the likelihood that historical records are unavailable if needed at some point in the future.

Proposed Rule 15Fi-5(c) requires each SBS Entity to have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by the rule. The Commission considered using the same requirement as that required by the CFTC that the audit be conducted by an independent internal or external auditor. The Commission chose not to follow this approach because in its experience overseeing accounting and auditing standards in the context of certain disclosure requirements under the federal securities laws, an internal auditor typically reports to the management of the applicable entity, which by definition would not satisfy the test for auditor independence under any existing statutory or regulatory provision that the Commission administers.³¹⁸ However, because the proposed rule would still encompass any auditor, whether external or internal, that is in fact independent, the Commission preliminarily believes that the practical differences between the Commission's proposed rule and the corresponding CFTC rule are negligible.

6. Cross-Border Application of Rules 15Fi-3 Through 15Fi-5

In early 2016, the Commission adopted Rule 3a71-6 under the Exchange Act, which determined that non-U.S. SBS Entities could satisfy certain requirements of Section 15F by

complying with comparable regulatory requirements of a foreign financial regulatory system.³¹⁹ At the time of the substituted compliance rule, it applied solely to business conduct standards; however, Rule 3a71-6 was amended in the Trade Acknowledgement and Verification Adopting Release to provide foreign SBS Entities with the potential to rely on substituted compliance to satisfy Title VII trade confirmation requirements.³²⁰

a. Requirements

The Commission is proposing to amend further Rule 3a71-6 to allow non-U.S. SBS Entities to potentially be able to satisfy through substituted compliance the Title VII portfolio reconciliation, portfolio compression, and trading relationship documentation requirements in proposed Rules 15Fi-3 through 15Fi-5. The Commission has preliminarily determined that the principles previously set forth in the Business Conduct Standards Adopting Release and the Trade Acknowledgement and Verification Adopting Release with respect to substituted compliance should in large part similarly pertain to the reconciliation, compression, and documentation requirements proposed herein.

b. Benefits

The Commission proposed amendments to Rule 3a71-6 permit consideration of substituted compliance in order to reduce the probability that SBS Entities are subject to potentially duplicative or conflicting regulation. Market participants that face duplicative regulatory regimes are likely to attain comparable regulatory outcomes, but at a cost of increased compliance burdens without an analogous increase in benefits. The availability of substituted compliance could decrease the compliance burden for non-U.S. SBS Entities, particularly as it pertains to portfolio reconciliation, portfolio compression, and trading relationship documentation. Allowing for the possibility of substituted compliance may help achieve the risk mitigation requirements set forth in proposed Rules 15Fi-3 through 15Fi-5, in particular as it reduces legal uncertainty, counterparty credit risk exposure, and operational risk for market participants.

Further, the Commission anticipates broader market implications of

substituted compliance, as well, namely an increase in foreign SBS dealers' activity in the U.S. market, the expansion of access by both U.S. and foreign SBS Entities to global liquidity, and a reduction in the possibility of liquidity fragmentation along jurisdictional lines. The availability of substituted compliance for non-U.S. SBS Entities also could promote market efficiency, while enhancing competition in U.S. markets. Increased participation and access to liquidity is likely to improve efficiencies related to hedging and risk sharing, while simultaneously increasing competition between domestic and foreign SBS Entities.

c. Costs

The Commission preliminarily believes that the availability of substituted compliance for portfolio reconciliation, portfolio compression, and trading relationship documentation would not substantially alter the benefits intended by the proposed Rules 15Fi-3 through 15Fi-5. In particular, it is expected that the availability of substituted compliance will not detract from the risk mitigation benefits that stem from periodic portfolio reconciliation, as well as policies and procedures regarding portfolio compression exercises and trading relationship documentation.

To the extent that substituted compliance reduces duplicative compliance costs, non-U.S. SBS Entities entering into transactions in which substituted compliance is available may incur lower overall costs associated with portfolio reconciliation, portfolio compression, and documentation exercises with their counterparties than they would otherwise incur without the option of substituted compliance availability, either because a non-U.S. SBS Entity may have already implemented foreign regulatory requirements which have been deemed comparable by the Commission, or because security-based swap counterparties eligible for substituted compliance do not need to duplicate compliance with two sets of comparable requirements.

A substituted compliance request can be made by either a foreign regulatory jurisdiction on behalf of its market participants, or by the registered market participant itself.³²¹ The decision to request substituted compliance is voluntary, and therefore, to the extent that requests are made by individual market participants, such participants would request substituted compliance

³¹⁹ See Business Conduct Standards Adopting Release, 81 FR at 30074.

³²⁰ See Trade Acknowledgement and Verification Adopting Release, 81 FR at 39827-28.

³²¹ See Cross-Border Adopting Release, 79 FR at 47277.

³¹⁷ See *supra* Section I.F.1.

³¹⁸ See *supra* Section I.D.5.

only if compliance with foreign regulatory requirements was less costly, in their own assessment, than compliance with both the foreign regulatory regime and the relevant Title VII requirements, including portfolio reconciliation, portfolio compression, and trading relationship documentation requirements. Even after a substituted compliance determination is made, market participants would only choose substituted compliance for portfolio reconciliation, compression, and documentation requirements if the benefits that they expect to receive from transacting in the U.S. markets exceed the costs that they expect to bear for doing so.

D. Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including whether the analysis has: (i) Identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (ii) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (iii) identified and considered reasonable alternatives to the proposed regulations. We request and encourage any interested person to submit comments regarding the proposed regulations and our analysis of the potential effects of the proposed regulations. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rule and proposed amendments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. In addition to our general request for comment on the economic analysis associated with the proposed rule and proposed amendments, we request specific comment on certain aspects of the proposal:

- We request comment on our characterization of current portfolio reconciliation practices. Do commenters agree that the proposed portfolio reconciliation rules are similar to current best practices? If not, how are they different? Are there third party service providers that offer portfolio reconciliation services? If so, what are the costs associated with using such services?

- We request comment on our characterization of current portfolio compression practices. Do commenters agree that the proposed portfolio compression rules are similar to current best practices? If not, how are they

different? The Commission understands that there are third party service providers that offer portfolio compression services. What are the direct and indirect costs of using such service providers?

- We request comment on our characterization of current trading relationship documentation practices. Do commenters agree with our characterization? If not, how are they different?

- We request comment on our characterization of the benefits of the proposed regulations concerning portfolio reconciliation. The Commission preliminarily believes that the main benefit of portfolio reconciliation is improved management of market and credit risks associated with particular transactions. Do commenters agree with this characterization of the benefits? Are there other benefits of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the benefits appropriate? Can commenters provide data that supports or opposes these assumptions? Can commenters provide data that would help the Commission quantify the magnitude of the benefits identified in our discussion or other benefits that we did not identify in our discussion and that warrant consideration?

- We request comment on our characterization of the costs of the proposed regulations concerning portfolio reconciliation. The Commission preliminarily believes that making its rules as similar as practicable to those of the CFTC will mitigate compliance costs for SBS entities. The Commission also preliminarily believes that ongoing portfolio reconciliation costs would likely be a function of portfolio size and the availability of third party service providers. Do commenters agree with our characterization of the costs? Are there other costs of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the costs appropriate? Can commenters provide data that supports or opposes these assumptions? Can commenters provide data that would help the Commission quantify the magnitude of the costs identified in our discussion or other costs that we did not identify in our discussion and that warrant consideration?

- We request comment on our characterization of the benefits of the proposed rules concerning portfolio

compression. The Commission preliminarily believes that the main benefit of the proposed portfolio compression rule is the potential for reducing the overall risk, cost, and inefficiencies associated with maintaining offsetting transactions. Do commenters agree with this characterization of the benefits? Are there other benefits of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the benefits appropriate? Can commenters provide data that supports or opposes these assumptions? Can commenters provide data that would help the Commission quantify the magnitude of the benefits identified in our discussion or other benefits that we did not identify in our discussion and that warrant consideration?

- We request comment on our characterization of the costs of the proposed regulations concerning portfolio compression. The Commission preliminarily believes the making its rules as similar as practicable to those of the CFTC will mitigate compliance costs for SBS entities. Do commenters agree with our characterization of the costs? Are there other costs of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the costs appropriate? The Commission preliminarily believes third-party service providers often facilitate multilateral portfolio compression but lacks data on the costs to participants of using these services. Can commenters provide data that supports or opposes these assumptions? Can commenters provide data that would help the Commission quantify the magnitude of the costs identified in our discussion or other costs that we did not identify in our discussion and that warrant consideration?

- We request comment on our characterization of the benefits of the proposed rules concerning trading relationship documentation. The Commission preliminarily believes that the main benefit of the proposed trading relationship documentation rule is the potential for reducing the likelihood of collateral and legal disputes between counterparties that might expose each side to significant counterparty credit risk. Do commenters agree with this characterization of the benefits? Are there other benefits of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the

benefits appropriate? Can commenters provide data that supports or opposes these assumptions? Can commenters provide data that would help the Commission quantify the magnitude of the benefits identified in our discussion or other benefits that we did not identify in our discussion and that warrant consideration?

- We request comment on our characterization of the costs of the proposed regulations concerning trading relationship documentation. The Commission preliminarily believes the widespread use of standard documentation mitigates the costs of the proposed rule. Do commenters agree with our characterization of the costs? Are there other costs of the proposed rule that have not been identified in our discussion and that warrant consideration? Are the assumptions that form the basis of our analysis of the costs appropriate? Can commenters provide data that would help the Commission quantify the magnitude of the costs identified in our discussion or other costs that we did not identify in our discussion and that warrant consideration?

- Are there any effects on efficiency, competition, and capital formation that are not identified or are misidentified in our economic analysis? Please be specific and provide data and analysis to support your views.

- Do commenters believe that the alternatives the Commission considered are appropriate? Are there other reasonable alternatives that the Commission should consider? If so, please provide additional alternatives and how their costs and benefits would compare to the proposal.

- We request and encourage any interested person to submit comments regarding any aspect of the economic analysis of the proposed rule, specific issues discussed in the economic analysis, and other matters that may have an effect on the costs or benefits of the proposed rule. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”) ³²² the Commission requests comment on the potential impact of the proposed rules and

³²² Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

amendments on the economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (“RFA”) ³²³ requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) ³²⁴ of the Administrative Procedure Act, ³²⁵ as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on “small entities.” Section 605(b) of the RFA ³²⁶ provides that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA, ³²⁷ a small entity includes: (1) When used with reference to an “issuer” or a “person,” other than an investment company, an “issuer” or “person” that, on the last day of its most recent fiscal year, had total assets of \$5 million or less; ³²⁸ or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act, ³²⁹ or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any

³²³ 5 U.S.C. 601 *et seq.*

³²⁴ 5 U.S.C. 603(a).

³²⁵ 5 U.S.C. 551 *et seq.*

³²⁶ 5 U.S.C. 605(b).

³²⁷ Although Section 601(b) of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term “small entity” for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. See Exchange Act Release No. 18451 (Jan., 28, 1982), 47 FR 5215 (Feb., 4, 1982) (File No. AS–305).

³²⁸ See 17 CFR 240.0–10(a).

³²⁹ 17 CFR 240.17a–5(d).

person (other than a natural person) that is not a small business or small organization. ³³⁰ Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with \$175 million or less in assets; ³³¹ (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with \$7 million or less in annual receipts; ³³² (iii) for entities engaged in financial investments and related activities, entities with \$7 million or less in annual receipts; ³³³ (iv) for insurance carriers and entities engaged in related activities, entities with \$7 million or less in annual receipts; ³³⁴ and (v) for funds, trusts, and other financial vehicles, entities with \$7 million or less in annual receipts. ³³⁵

With respect to SBS Entities, based on feedback from market participants and our information about the security-based swap markets, and consistent with our position in prior Dodd-Frank Act rulemakings, the Commission continues to believe that (1) the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be “small entities” for purposes of the RFA and (2) the types of entities that may have security-based swap positions above the level required to be “major security-based swap participants” would not be “small entities” for purposes of the RFA. ³³⁶

For the foregoing reasons, the Commission certifies that neither proposed Rules 15Fi–3 through 15Fi, nor the proposed amendments to Rules 3a71–6, 15Fi–1, 17a–3, 17a–4, 18a–5 (proposed) and 18a–6 (proposed) would, if adopted, have a significant economic impact on a substantial number of small entities. The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed rules could have an effect on small

³³⁰ See 17 CFR 240.0–10(c).

³³¹ See 13 CFR 121.201 (Subsector 522).

³³² See *id.* at Subsector 522.

³³³ See *id.* at Subsector 523.

³³⁴ See *id.* at Subsector 524.

³³⁵ See *id.* at Subsector 525.

³³⁶ See SBS Entity Registration Adopting Release, 80 FR at 49013; SBS Books and Records Proposing Release, 79 FR at 25296–97 and n.1441; Intermediary Definitions Adopting Release, 77 FR at 30743. See also Sections V (Paperwork Reduction Act) and VI (Economic Analysis) (discussing, among other things, the economic impact, including the estimated compliance costs and burdens, of the amendments).

entities that has not been considered. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

IX. Statutory Basis and Text of Proposed Rules

The Commission is proposing to revise Rules 3a71-6, 15Fi-1, 17a-3, and 17a-4 under the Exchange Act (17 CFR 240.3a71-6, 17 CFR 240.15Fi-1, 17 CFR 240.17a-3 [as proposed to be amended at 79 FR 25193, May 2, 2014], and 17 CFR 240.17a-4 [as proposed to be amended at 79 FR 25193, May 2, 2014]), to revise proposed Rules 18a-5 and 18a-6 under the Exchange Act (17 CFR 240.18a-5 [as proposed to be adopted at 79 FR 25193, May 2, 2014] and 17 CFR 240.18a-6 [as proposed to be adopted at 79 FR 25193, May 2, 2014]) and to add new Rules 15Fi-3, 15Fi-4, and 15Fi-5 under the Exchange Act (17 CFR 240.15Fi-3, 17 CFR 240.15Fi-4, and 17 CFR 240.15Fi-5) pursuant to the authority conferred by the Exchange Act, as amended, and particularly sections 3(b), 15F, 17, and 23(a).³³⁷

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Security-based swaps, Security-based swap dealers, Major security-based swap participants.

Text of the Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Section 240.3a71-6 is amended by adding paragraph (d)(4) to read as follows:

§ 240.3a71-6 Substituted compliance for security-based swap dealers and major security-based swap participants.

* * * * *

(d) * * *

(4) *Portfolio reconciliation, portfolio compression, and trading relationship documentation requirements.* The portfolio reconciliation, portfolio compression, and trading relationship documentation requirements of section 15F(i) of the Act (15 U.S.C. 78o-10(i)) and §§ 240.15Fi-3 through 15Fi-5; provided, however, that prior to making such a substituted compliance determination the Commission intends to consider whether the requirements of the foreign financial regulatory system for engaging in portfolio reconciliation and portfolio compression and for executing trading relationship documentation with counterparties, the duties imposed by the foreign financial regulatory system, and the information that is required to be provided to counterparties pursuant to the requirements of the foreign financial regulatory system, are comparable to those required pursuant to the applicable provisions arising under the Act and its rules and regulations.

■ 3. Revise § 240.15Fi-1 to read as follows:

§ 240.15Fi-1 Definitions.

For the purposes of § 240.15Fi-1 through § 240.15Fi-5:

(a) The term *bilateral portfolio compression exercise* means an exercise by which two security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(b) The term *business day* means any day other than a Saturday, Sunday, or legal holiday.

(c) The term *clearing agency* means a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) and provides central counterparty services for security-based swap transactions.

(d) The term *clearing transaction* means a security-based swap that has a clearing agency as a direct counterparty.

(e) The term *day of execution* means the calendar day of the counterparty to the security-based swap transaction that ends the latest, provided that if a security-based swap transaction is

(1) Entered into after 4:00 p.m. in the place of a counterparty; or

(2) Entered into on a day that is not a business day in the place of a counterparty, then such security-based swap transaction shall be deemed to have been entered into by that counterparty on the immediately succeeding business day of that counterparty, and the day of execution shall be determined with reference to such business day.

(f) The term *execution* means the point at which the counterparties become irrevocably bound to a transaction under applicable law.

(g) The term *financial counterparty* means a counterparty that is not a security-based swap dealer or a major security-based swap participant and that is one of the following:

(1) A swap dealer;

(2) A major swap participant;

(3) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(4) A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a));

(5) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and

(6) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843k).

(h) The term *fully offsetting security-based swaps* means security-based swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

(i) The term *material terms* means:

(1) With respect to any security-based swap that has not yet been included in a security-based swap portfolio and reconciled pursuant to § 240.15Fi-3, each term that is required to be reported to a registered swap data repository or the Commission pursuant to § 242.901 of this chapter; and

(2) With respect to all other security-based swaps within a security-based swap portfolio, each term that is required to be reported to a registered swap data repository or the Commission pursuant to § 242.901 of this chapter; provided, however, that such definition does not include any term that is not

³³⁷ 15 U.S.C. 78c(b), 78o-10, 78q, 78w(a), and 78mm.

relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

(j) The term *multilateral portfolio compression exercise* means an exercise by which multiple security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(k) The term *national securities exchange* means an exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(1)) that is registered pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(l) The term *portfolio reconciliation* means any process by which the counterparties to one or more security-based swaps:

(1) Exchange the material terms of all security-based swaps in the security-based swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each security-based swap in the security-based swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in valuations or material terms.

(m) The term *prudential regulator* has the meaning given to the term in section 3(a)(74) of the Act (15 U.S.C. 78c(a)(74)) and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the security-based swap dealer or major security-based swap participant.

(n) The term *security-based swap execution facility* means a security-based swap execution facility as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) that is registered pursuant to section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c-4).

(o) The term *security-based swap portfolio* means all security-based swaps currently in effect between a particular security-based swap dealer or major security-based swap participant and a particular counterparty.

(p) The term *trade acknowledgment* means a written or electronic record of a security-based swap transaction sent by one counterparty of the security-based swap transaction to the other.

(q) The term *valuation* means the current market value or net present value of a security-based swap.

(r) The term *verification* means the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

■ 4. Section 240.15Fi-3 is added to read as follows:

§ 240.15Fi-3 Security-based swap portfolio reconciliation.

(a) *Security-based swaps with security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall engage in portfolio reconciliation as follows for all security-based swaps in which its counterparty is also a security-based swap dealer or major security-based swap participant.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of this section.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each security-based swap portfolio that includes 500 or more security-based swaps;

(ii) Once each week for each security-based swap portfolio that includes more than 50 but fewer than 500 security-based swaps on any business day during the week; and

(iii) Once each calendar quarter for each security-based swap portfolio that includes no more than 50 security-based swaps at any time during the calendar quarter.

(4) Each security-based swap dealer and major security-based swap participant shall resolve immediately any discrepancy in a material term of a security-based swap identified as part of a portfolio reconciliation or otherwise.

(5) Each security-based swap dealer and major security-based swap participant shall establish, maintain,

and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified, provided that the security-based swap dealer and major security-based swap participant establishes, maintains, and follows written policies and procedures reasonably designed to identify how the security-based swap dealer or major security-based swap participant will comply with any variation margin requirements under section 15F(e) of the Act (15 U.S.C. 78o-10(e)) and regulations thereunder pending resolution of the discrepancy in valuation. For purposes of this paragraph, a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(b) *Security-based swaps with entities other than security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps in which its counterparty is neither a security-based swap dealer nor a major security-based swap participant as follows.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with paragraph (b)(1) of this section.

(3) The portfolio reconciliation will be required to be performed no less frequently than:

(i) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter; and

(ii) Once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.

(4) Each security-based swap dealer or major security-based swap participant shall establish, maintain, and follow

written procedures reasonably designed to resolve any discrepancies in the valuation or material terms of each security-based swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is neither a security-based swap dealer nor major security-based swap participant in a timely fashion. For purposes of this paragraph, a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

(c) *Reporting of Security-Based Swap Valuation Disputes.* Each security-based swap dealer and major security-based swap participant shall promptly notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level, if not resolved within:

(1) Three business days, if the dispute is with a counterparty that is a security-based swap dealer or major security-based swap participant; or

(2) Five business days, if the dispute is with a counterparty that is not a security-based swap dealer or major security-based swap participant.

(d) *Reconciliation of cleared security-based swaps.* Nothing in this section shall apply to any clearing transaction.

■ 5. Section 240.15Fi-4 is added to read as follows:

§ 240.15Fi-4 Security-based swap portfolio compression.

(a) *Portfolio compression with security-based swap dealers and major security-based swap participants—(1) Bilateral offset.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for terminating each fully offsetting security-based swap between a security-based swap dealer or major security-based swap participant and another security-based swap dealer or major security-based swap participant in a timely fashion, when appropriate.

(2) *Bilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in bilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the

evaluation of bilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(3) *Multilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in multilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the evaluation of multilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(b) *Portfolio compression with counterparties other than security-based swap dealers and major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically terminating fully offsetting security-based swaps and for engaging in bilateral or multilateral portfolio compression exercises with respect to security-based swaps in which its counterparty is an entity other than a security-based swap dealer or major security-based swap participant, when appropriate and to the extent requested by any such counterparty.

(c) *Portfolio compression of cleared security-based swaps.* Nothing in this section shall apply to any clearing transaction.

■ 6. Section 240.15Fi-5 is added to read as follows:

§ 240.15Fi-5 Security-based swap trading relationship documentation.

(a)(1) *Applicability.* The requirements of this section shall not apply to:

(i) Security-based swaps executed prior to the date on which a security-based swap dealer or major security-based swap participant is required to be in compliance with this section;

(ii) Any clearing transaction; and

(iii) Security-based swaps executed anonymously on a national securities exchange or a security-based swap execution facility, *Provided that:*

(A) Such security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency;

(B) All terms of such security-based swaps conform to the rules of the clearing agency; and

(C) Upon acceptance of such security-based swap by the clearing agency:

(1) The original security-based swap is extinguished;

(2) The original security-based swap is replaced by equal and opposite

security-based swaps with the clearing agency; and

(3) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules; and *Provided further,* That if a security-based swap dealer or major security-based swap participant receives notice that a security-based swap transaction has not been accepted for clearing by a clearing agency, the security-based swap dealer or major security-based swap participant shall be required to comply with the requirements of this section in all respects promptly after receipt of such notice.

(2) *Policies and procedures.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that the security-based swap dealer or major security-based swap participant executes written security-based swap trading relationship documentation with its counterparty that complies with the requirements of this section. The policies and procedures shall be approved in writing by a senior officer of the security-based swap dealer or major security-based swap participant, and a record of the approval shall be retained. Other than trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi-2, the security-based swap trading relationship documentation shall be executed prior to, or contemporaneously with, executing a security-based swap with any counterparty.

(b) *Security-based swap trading relationship documentation.* (1) The security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer or major security-based swap participant and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations (including pursuant to §§ 242.900 to 242.909) of this chapter, governing law, valuation, and dispute resolution.

(2) The security-based swap trading relationship documentation shall include all trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi-2.

(3) The security-based swap trading relationship documentation shall

include credit support arrangements, which shall contain, in accordance with applicable requirements under Commission regulations or regulations adopted by prudential regulators and without limitation, the following:

(i) Initial and variation margin requirements, if any;

(ii) Types of assets that may be used as margin and asset valuation haircuts, if any;

(iii) Investment and re-hypothecation terms for assets used as margin for uncleared security-based swaps, if any; and

(iv) Custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with section 3E(f) of the Act (15 U.S.C. 78c-5(f)), if any.

(4)(i) The security-based swap trading relationship documentation between security-based swap dealers, between major security-based swap participants, between a security-based swap dealer and major security-based swap participant, between a security-based swap dealer or major security-based swap participant and a financial counterparty, and, if requested by any other counterparty, between a security-based swap dealer or major security-based swap participant and such counterparty, shall include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each security-based swap at any time from execution to the termination, maturity, or expiration of such security-based swap for the purposes of complying with the margin requirements under section 15F(e) of the Act (15 U.S.C. 78o-10(e)) and regulations thereunder, and the risk management requirements under section 15F(j) of the Act (15 U.S.C. 78o-10(j)) of the Act and regulations thereunder. To the maximum extent practicable, the valuation of each security-based swap shall be based on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

(ii) Such documentation shall include either:

(A) Alternative methods for determining the value of the security-based swap for the purposes of complying with this paragraph in the event of the unavailability or other failure of any input required to value the security-based swap for such purposes; or

(B) A valuation dispute resolution process by which the value of the security-based swap shall be determined

for the purposes of complying with this paragraph (b)(4).

(iii) A security-based swap dealer or major security-based swap participant is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a security-based swap.

(iv) The parties may agree on changes or procedures for modifying or amending the documentation at any time.

(5) The security-based swap trading relationship documentation of a security-based swap dealer or major security-based swap participant shall include the following:

(i) A statement of whether the security-based swap dealer or major security-based swap participant is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));

(ii) A statement of whether the counterparty is an insured depository institution or financial company;

(iii) A statement that in the event either the security-based swap dealer or major security-based swap participant or its counterparty becomes a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5381(a)(8)) or is an insured depository institution for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as a receiver (the "covered party"), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party under section 210(c)(9)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(iv) An agreement between the security-based swap dealer or major security-based swap participant and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

(6) The security-based swap trading relationship documentation of each security-based swap dealer and major security-based swap participant shall contain a notice that, upon acceptance

of a security-based swap by a clearing agency:

(i) The original security-based swap is extinguished;

(ii) The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

(iii) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules.

(c) *Audit of security-based swap trading relationship documentation.* Each security-based swap dealer and major security-based swap participant shall have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by this section. A record of the results of each audit shall be retained.

■ 7. Section 240.17a-3, as proposed to be amended at 79 FR 25193, May 2, 2014 is further amended by adding paragraph (a)(31) to read as follows:

§ 240.17a-3 Records to be made by certain brokers and dealers.

* * * * *

(a) * * *

(31)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi-3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi-3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi-4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

* * * * *

■ 8. Section 240.17a-4, as proposed to be amended at 79 FR 25193, May 2, 2014 is amended by revising paragraph (b)(1) and adding paragraphs (e)(10) and (11) to read as follows:

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(16), (a)(18), (a)(19), (a)(20), (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), (a)(30), and (a)(31), and analogous records created pursuant to § 240.17a-3(e).

* * * * *

(e) * * *

(10) The written policies and procedures required pursuant to §§ 240.15Fi-3, 240.15Fi-4, and 240.15Fi-5 until three years after termination of the use of the policies and procedures.

(11) (i) Each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under § 240.15Fi-3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby.

(ii) Security-based swap trading relationship documentation with counterparties required to be created under § 240.15Fi-5 until three years after the termination of such documentation and all transactions governed thereby.

(iii) A record of the results of each audit required to be performed pursuant to § 240.15Fi-5(c) until three years after the conclusion of the audit.

* * * * *

■ 9. Section 240.18a-5, as proposed to be added at 79 FR 25193, May 2, 2014, is further amended by adding paragraphs (a)(18) and (b)(14) to read as follows:

§ 240.18a-5 Records to be made by certain security-based swap dealers and major security-based swap participants.

* * * * *

(a) * * *

(18)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi-3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio

reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi-3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi-4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

* * * * *

(b) * * *

(14)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi-3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi-3(c).

(iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi-4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the

compression, and the name of the third-party entity performing the offset or compression, if any.

* * * * *

■ 10. Section 240.18a-6, as proposed to be added at 79 FR 25193, May 2, 2014, is further amended by revising paragraphs (b)(1)(i) and (b)(2)(i) and adding paragraphs (d)(4) and (d)(5) to read as follows:

§ 240.18a-6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

* * * * *

(b) * * *

(1) * * *

(i) All records required to be made pursuant to §§ 240.18a-5(a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18).

* * * * *

(2) * * *

(i) All records required to be made pursuant to § 240.18a-5(b)(4), (b)(5), (b)(6), (b)(7), (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), and (b)(14).

* * * * *

(d) * * *

(4) The written policies and procedures required pursuant to §§ 240.15Fi-3, 240.15Fi-4, and 240.15Fi-5 until three years after termination of the use of the policies and procedures.

(5)(i) Each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under § 240.15Fi-3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby.

(ii) Security-based swap trading relationship documentation with counterparties required to be created under § 240.15Fi-5 until three years after the termination of such documentation and all transactions governed thereby.

(iii) A record of the results of each audit required to be performed pursuant to § 240.15Fi-5(c) until three years after the conclusion of the audit.

* * * * *

By the Commission.

Dated: December 19, 2018.

Brent J. Fields,
Secretary.

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

959-1342.....	1
1343-1598.....	4
1599-2042.....	5
2043-2426.....	6
2427-2704.....	7
2705-3094.....	8
3095-3284.....	11
3285-3668.....	12
3669-3966.....	13
3967-4306.....	14
4307-4676.....	15

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	36.....	3116
	39.....	3116
Executive Orders:	50.....	2069
13788 (Amended by	52.....	2069
13858).....	100.....	2069
13858.....	430.....	3120, 3910
13859.....	431.....	1652, 3910
Proclamations:		
9840.....	.....	2043
9841.....	.....	2045
9842 (See Proc.	.....	3665
9822).....	.....	3965
9843.....		
Administrative Orders		
Memorandums:		
Memorandum of		
December 21,		
2018.....	.....	3957
Memorandum of		
December 21,		
2018.....	.....	3959
Memorandum of		
January 8, 2019.....	.....	3961
Memorandum of		
January 15, 2019.....	.....	3963
5 CFR		
894.....	.....	1599
1655.....	.....	1600
Proposed Rules:		
532.....	.....	3729
7 CFR		
51.....	.....	959
300.....	.....	2427
301.....	.....	2427
318.....	.....	2427
319.....	.....	2427
330.....	.....	2427
340.....	.....	2427
355.....	.....	2427
905.....	.....	2047
932.....	.....	4307
989.....	.....	2049
1212.....	.....	1343
1774.....	.....	3669
Proposed Rules:		
54.....	.....	1641
205.....	.....	4377
273.....	.....	980
985.....	.....	4381
1209.....	.....	3114
9 CFR		
310.....	.....	2430
10 CFR		
2.....	.....	2433
9.....	.....	3095
13.....	.....	2433
72.....	.....	4309
430.....	.....	2436
Proposed Rules:		
34.....	.....	3116
36.....	.....	3116
39.....	.....	3116
50.....	.....	2069
52.....	.....	2069
100.....	.....	2069
430.....	.....	3120, 3910
431.....	.....	1652, 3910
11 CFR		
Proposed Rules:		
100.....	.....	2070
110.....	.....	3344
112.....	.....	2071
12 CFR		
1.....	.....	4222
3.....	.....	4222
5.....	.....	4222
23.....	.....	4222
24.....	.....	4222
32.....	.....	4222
46.....	.....	4222
208.....	.....	4222
211.....	.....	4222, 4309
215.....	.....	4222
217.....	.....	4222
223.....	.....	4222
225.....	.....	4222
238.....	.....	4309
252.....	.....	4222
263.....	.....	2051
303.....	.....	2705
324.....	.....	4222
325.....	.....	4222
327.....	.....	1346, 4222
337.....	.....	1346
347.....	.....	4222
348.....	.....	2705
390.....	.....	4222
622.....	.....	1354
652.....	.....	2706
700.....	.....	1601
701.....	.....	1601
702.....	.....	1601
703.....	.....	1601
704.....	.....	1601
705.....	.....	1601
708a.....	.....	1601
708b.....	.....	1601
709.....	.....	1601
710.....	.....	1601
715.....	.....	1601
717.....	.....	1601
723.....	.....	1601
725.....	.....	1601
741.....	.....	1601
745.....	.....	1601
746.....	.....	1601
747.....	.....	1601, 2052
748.....	.....	1601
749.....	.....	1601
750.....	.....	1601
760.....	.....	1601

790.....1601	9.....3350	100.....968	3376, 3381, 3384, 3387,
791.....1601	36.....3350	101.....968	3389, 3740, 3742, 3744,
792.....1601	37.....3350	199.....4326	4019, 4021, 4025, 4403,
1026.....1356	38.....3350	279.....969	4407, 4411, 4422, 4426
1411.....2437	39.....3350	809a.....2734	60.....2484, 2485
Proposed Rules:	43.....3350		62.....1039
1.....3062	75.....2778	33 CFR	63.....1570, 2670
3.....3062	240.....4614	100.....3301	81.....4029, 4422, 4426
5.....3062	255.....2778	117.....1401, 2735	110.....2483, 4154
6.....3062	270.....1286	165.....969, 2736, 4333	112.....2483, 4154
23.....3062		Proposed Rules:	116.....2483, 4154
24.....3062	18 CFR	100.....4390	117.....2483, 4154
32.....3062	11.....1359	154.....2799	122.....2483, 4154
34.....3062	250.....966	155.....2800	131.....3395
44.....2778	385.....966, 3982	165.....2479	174.....2115
46.....3345	Proposed Rules:	328.....2483, 4154	180.....1691, 2115
160.....3062	7.....2469	334.....3739	230.....4154
192.....3062	35.....993		232.....2483, 4154
206.....3062	141.....1412	34 CFR	300.....2116, 2122, 2483, 4033,
208.....3062	385.....1412	36.....971	4054
211.....3062		668.....971	302.....2483, 4154
215.....3062	20 CFR	Proposed Rules:	401.....2483, 4154
217.....3062	30.....3026	106.....4018	
223.....3062	404.....4323		42 CFR
225.....3062	408.....4323	37 CFR	Proposed Rules:
238.....3062, 4002	416.....4323	201.....3693	493.....1536
248.....2778	Proposed Rules:	202.....3693, 3698	1001.....2340
251.....3062	404.....1006	203.....3699	
252.....4002	416.....1006	385.....1918	44 CFR
303.....3062		Proposed Rules:	64.....978, 3338
324.....3062	21 CFR	2.....4393	
337.....2366, 3062	1308.....2448	11.....4393	45 CFR
347.....3062		201.....1661	1149.....1402
351.....2778	22 CFR		1158.....1402
362.....3062	Proposed Rules:	38 CFR	1607.....1404
365.....1653, 3062	171.....1419	3.....2449, 4336	1611.....1408
390.....1653, 3062	203.....3351	8.....2449, 4336	
1041.....4252, 4298		14.....2449, 4336	46 CFR
	23 CFR	19.....2449, 4336	506.....2459
14 CFR	1270.....2731	20.....2449, 4336	Proposed Rules:
39.....2437, 2707, 2709, 2713,	1275.....2731	21.....2449, 4336	515.....2125
2715, 3285, 3288, 3290,	Proposed Rules:	Proposed Rules:	
3297, 4310, 4313, 4315,	658.....2071	4.....1678, 3354	47 CFR
4318, 4320		38.....2093	0.....2753
48.....3669	25 CFR	39.....2093	1.....1618, 2460, 2461, 2753
71.....961, 2718, 3095, 3097,	Proposed Rules:		5.....2753
3098, 3101, 3673, 3674,	30.....3135	39 CFR	25.....2462
3676, 3677, 3679		20.....3107	30.....1618
73.....3299	26 CFR	3035.....974	36.....4351
95.....963	1.....1838, 2952	Proposed Rules	64.....1409
97.....2441, 2443, 2719, 2720,	Proposed Rules:	3020.....1420	73.....2753
3973, 3975, 3977, 3978	1.....1014, 3015		74.....2753
Proposed Rules:		40 CFR	Proposed Rules:
13.....3614	27 CFR	19.....2056	1.....2485, 4035
39.....2465, 2467, 2791, 2793,	Proposed Rules:	52.....976, 1610, 1615, 2060,	25.....2126
2796, 3131, 4012, 4387	9.....3353	2063, 2449, 2738, 3302,	32.....2132
71.....3349, 3730		3305, 3701, 3703, 3705,	54.....2132
107.....3732, 3856	29 CFR	3708, 3711, 3986, 3991,	65.....2132
	30.....3301	4338	73.....2485
15 CFR	4022.....3983	60.....3108, 3985, 3986	76.....4039
6.....2445	Proposed Rules:	61.....3108	
902.....2725	1404.....1420	62.....3712	48 CFR
950.....3101	4001.....2075	63.....2742, 3108, 3308	Ch. 2.....4360
	4204.....2075	70.....1615, 3108	204.....4362
16 CFR	4206.....2075	80.....2453	206.....4364
1.....3980	4207.....2075	122.....3324	211.....4366
Proposed Rules:	4211.....2075	124.....3324	212.....4362, 4368, 4370
Ch. II.....3134	4219.....2075	125.....3324	215.....4364, 4368
	1614.....4015	180.....2456, 4340, 4345	234.....4364
17 CFR		Proposed Rules:	235.....4364
143.....3103	31 CFR	Ch. I.....3396	236.....4371
229.....2402	27.....3105	49.....1690	239.....4368
240.....2402		52.....1015, 1016, 1021, 1025,	247.....4370
Proposed Rules:	32 CFR	1037, 1690, 2109, 2801,	252.....4362, 4368, 4370
Ch. I.....3350	75.....3681	3354, 3358, 3369, 3373,	501.....1410, 3714

517.....3714	5252.....3113	Proposed Rules:	648 .....1632, 2463, 2760, 3341,
519.....1410	Proposed Rules:	10.....2137	4373
532.....3714	215.....4429	563.....2804	665.....2767
536.....3714	217.....4429	1002.....1046	679 .....2067, 2068, 2723, 2776,
543.....3714	806.....1014	1312.....1046	3342, 3726, 3727
546.....3714	49 CFR	50 CFR	680.....2723
552.....1410, 3714	107.....3993	622 .....1631, 2759, 3723	Proposed Rules:
5215.....3112	110.....3993	635.....3724	217.....3136
5242.....3113			300.....3403

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List February 1, 2019

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