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Contents

Federal Register

Vol. 84, No. 40

Thursday, February 28, 2019

Agriculture Department
See National Agricultural Statistics Service

Antitrust Division
NOTICES
Changes under the National Cooperative Research and Production Act:
American Wood Council, 6820
Border Security Technology Consortium, 6824
Cooperative Research Group on Energy Storage System Evaluation and Safety II, 6822–6823
Cooperative Research Group on HEDGE IV, 6820
Cooperative Research Group on ROSIndustrial Consortium-Americas, 6820
Interchangeable Virtual Instruments Foundation, Inc., 6821
Medical CBRN Defense Consortium, 6821–6822
Medical Technology Enterprise Consortium, 6824
National Spectrum Consortium, 6822
ODVA, Inc., 6833–6834
PXI Systems Alliance, Inc., 6822
Southwest Research Institute—Cooperative Research Group on Aftertreatment Technologies, 6821
Southwest Research Institute—Cooperative Research Group on CHEDE–VII, 6821
Space Enterprise Consortium, 6834
UHD Alliance, Inc., 6823–6824
Undersea Technology Innovation Consortium, 6823
Proposed Final Judgment and Competitive Impact Statement:
United States v. Learfield Communications, LLC; IMG College, LLC; and A-L Tier I, LLC, 6824–6833

Army Department
NOTICES
Intent to Grant Exclusive Patent License:
React Power, Inc.; New York, NY, 6773

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare, Medicaid, and Children's Health Insurance Programs:
Program Integrity Enhancements to the Provider Enrollment Process; Extension of Timeline for Publication of the Final Rule, 6740–6741
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6789–6791

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Descriptive Study of the Unaccompanied Refugee Minors Program, 6791–6792

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 6767

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
RULES
Standard Rates of Subsistence Allowance and Commutation Instead of Uniforms for Members of the Senior Reserve Officers' Training Corps, 6676
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6773–6774
Meetings:
Board of Actuaries, 6774
Medicare-Eligible Retiree Health Care Board of Actuaries, 6774–6775

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Client Assistance Program, 6775

Election Assistance Commission
NOTICES
Meetings:
Board of Advisers; Conference Call, 6776–6777
Proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines, 6775–6776

Employee Benefits Security Administration
NOTICES
Meetings:
Advisory Council on Employee Welfare and Pension Benefit Plans, 6835–6836

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
National Emission Standards for Hazardous Air Pollutants:
Wet-Formed Fiberglass Mat Production Residual Risk and Technology Review, 6676–6701
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Colorado; Revisions to Regulation Number 3, 6732–6736
Hawaii; Infrastructure SIP, 6736–6739
National Emission Standards for Hazardous Air Pollutants:
Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review, 6739–6740
Tolerance and Tolerance Exemption Actions:
Fenoxaprop-ethyl, Flufenpyr-ethyl, Imazapyr, Maleic hydrazide, Pyrazon, Quinclorac, Triflumizole, et. al., 6740
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
NESHAP for Mercury, 6780–6781
NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants, 6781–6782

Clean Air Act Operating Permit Program:
Petition for Objection to State Operating Permit for Suncor Energy, Commerce City, CO, 6780
Meetings:
Board of Scientific Counselors Air and Energy Subcommittee, 6782–6783
Environmental Modeling, 6781
Request for Nominations:
Clean Air Scientific Advisory Committee, 6783–6784

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Flippin, AR, 6671–6672
PROPOSED RULES
Airworthiness Directives:
Bombardier, Inc., Airplanes, 6705–6707
Mitsubishi Heavy Industries, Ltd. Airplanes; Withdrawal, 6708
Amendment of Class E Airspace:
Brady, TX, 6710–6711
Manitowoc and Sheboygan, WI, 6711–6713
Mount Vernon, IL, 6708–6710

Federal Communications Commission
PROPOSED RULES
2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules, 6741–6757
Television Broadcasting Services Gadsden and Hoover, AL, 6757–6758

Federal Energy Regulatory Commission
NOTICES
Application:
Duke Energy Carolinas, LLC, 6778–6779
Placer County Water Agency; Comment Period Extension, 6778
PUD No. 1 of Chelan County, 6779–6780
Environmental Assessments; Availability, etc.:
Igiugig Village Council, 6777
Sappi North America, Inc.; Comment Period Extension, 6778
License Application:
Gonzales Project; City of Gonzales, TX; Comment Period Extension, 6777
License Transfer; Application:
James M. Knott; James M. Knott, Jr., 6777–6778
Meetings:
Mid-America Pipeline Co., LLC; Seminole Pipeline Co. LLC; Rescheduling Technical Conference, 6778

Federal Maritime Commission
NOTICES
Agreements Filed, 6784

Federal Railroad Administration
NOTICES
Applications:
Approval of Discontinuance or Modification of a Railroad Signal System, 6861
Petition for Waiver of Compliance, 6861–6862

Federal Reserve System
RULES
Amendments to Policy Statement on the Scenario Design Framework for Stress Testing, 6651–6664
Stress Testing Policy Statement, 6664–6671
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6787–6789
Enhanced Disclosure of the Models Used in the Federal Reserve's Supervisory Stress Test, 6784–6787
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 6788

Federal Transit Administration
NOTICES
Meetings:
Early Scoping for the Capital Metro Orange Line High Capacity Transit Corridor in Austin, TX, 6862–6863

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Migratory Bird Harvest Information Program and Migratory Bird Surveys, 6814–6815

Food and Drug Administration
RULES
Change of Address; Technical Amendment, 6672–6673
Food Additives Permitted in Feed and Drinking Water of Animals:
Gamma-Linolenic Acid Safflower Oil, 6674–6675
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 6793–6795
Meetings:
Science Advisory Board to the National Center for Toxicological Research Advisory Committee, 6792–6793

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6795–6796

Homeland Security Department
See U.S. Customs and Border Protection
See U.S. Immigration and Customs Enforcement
NOTICES
Policy Guidance Related to Implementation of the Migrant Protection Protocols, 6811

Housing and Urban Development Department
NOTICES
Waiver and Alternative Requirement for Community Development Block Grant Disaster Recovery Grantees, 6813–6814

Indian Health Service
NOTICES
Indian Health Service Strategic Plan Fiscal Year 2019–2023, 6796–6807

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procedures for Submitting Request for Exclusions from the National Security Adjustments of Imports of Steel and Aluminum, 6767

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Cast Iron Soil Pipe from the People's Republic of China, 6770–6772
Determination of Sales at Less Than Fair Value:
Cast Iron Soil Pipe from the People's Republic of China, 6767–6770

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand, 6817–6818
Investigations; Determinations, Modifications, and Rulings, etc.:
Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain, 6819
Fresh Tomatoes from Mexico, 6817

Joint Board for Enrollment of Actuaries
NOTICES
Invitation for Membership:
Advisory Committee On Actuarial Examinations; Correction, 6819–6820

Justice Department
See Antitrust Division
NOTICES
Proposed Consent Decrees:
CERCLA, 6835
Clean Water Act, 6834–6835

Labor Department
See Employee Benefits Security Administration
See Wage and Hour Division

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
La Barge Platform Project, Sublette and Lincoln Counties, WY; Termination, 6816

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6765–6767

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection, 6758–6764

National Institutes of Health
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6808
National Institute of Child Health and Human Development, 6807–6808

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries, 6701–6703
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska, 6704
Fisheries of the Northeastern United States:
Small-Mesh Multispecies Fishery; Inseason Adjustment to the Northern Red Hake Possession Limit, 6703–6704
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6772–6773

National Park Service
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 6816–6817

Nuclear Regulatory Commission
NOTICES
Exemption and Combined License Amendment:
Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, 6837–6839

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 6839–6840

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains, 6910–6952

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6840–6842

Securities and Exchange Commission
PROPOSED RULES
Solicitations of Interest Prior to a Registered Public Offering, 6713–6732
NOTICES
Orders:
BOX Exchange, LLC, 6842–6844
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 6842, 6844–6846
Cboe C2 Exchange, Inc., 6846
Cboe EDGX Exchange, Inc., 6842, 6846–6847
New York Stock Exchange, LLC, 6868–6908

Small Business Administration
NOTICES
Disaster Declarations:
Alabama, 6847
Economic Injury Disaster Declaration:
Rhode Island, 6847–6848

Meetings:
Guaranteed Business Loans to Cooperatives, 6848

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Risk Analysis and Management, 6859–6860
Bureau of Political-Military Affairs, Directorate of Defense Trade Controls:
Notifications to the Congress of Proposed Commercial Export Licenses, 6848–6859
Culturally Significant Objects Imported for Exhibition:
Beatriz Gonzalez: A Retrospective, 6860
Tiepolo in Milan: The Lost Frescoes of Palazzo Archinto, 6860–6861

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 6863–6866

U.S. Customs and Border Protection
NOTICES
Final Determination:
Various Stimulating Probes, 6808–6811

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security, 6811–6812
Notice to Student or Exchange Visitor, 6812–6813

Wage and Hour Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans under the Davis-Bacon and Related Acts and Contract Works Hours and Safety Standards Act, 6836

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 6868–6908

Part III
Transportation Department, Pipeline and Hazardous Materials Safety Administration, 6910–6952

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.

12 CFR
252 (2 documents) 6651, 6664

14 CFR
71.....6671

Proposed Rules:
39 (2 documents) 6705, 6708
71 (3 documents) ...6708, 6710, 6711

17 CFR

Proposed Rules:
230.....6713

21 CFR
312.....6672
314.....6672
573.....6674

32 CFR
110.....6676

40 CFR
63.....6676

Proposed Rules:
52 (2 documents) 6732, 6736
63.....6739
180.....6740

42 CFR

Proposed Rules:
405.....6740
424.....6740
455.....6740
457.....6740

47 CFR

Proposed Rules:
73 (2 documents) 6741, 6757

49 CFR
107.....6910
130.....6910
171.....6910
173.....6910
174.....6910

Proposed Rules:
571.....6758

50 CFR
635.....6701
648.....6703
679.....6704

Rules and Regulations

Federal Register

Vol. 84, No. 40

Thursday, February 28, 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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FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. R–1650]

RIN 7100–AF 39

Amendments to Policy Statement on the Scenario Design Framework for Stress Testing

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to its policy statement on the scenario design framework for stress testing. As revised, the policy statement clarifies that the Board may adopt a change in the unemployment rate in the severely adverse scenario of less than 4 percentage points under certain economic conditions and institutes a guide that limits procyclicality in the stress test for the change in the house price index in the severely adverse scenario.

DATES: *Effective:* April 1, 2019.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Description of Policy Statement on the Scenario Design Framework for Stress Testing
III. Summary of Comments Received and Revisions to the Policy Statement on the Scenario Design Framework for Stress Testing
A. Unemployment Rate in the Severely Adverse Scenario
B. House Prices in the Severely Adverse Scenario
C. Incorporating Short-Term Wholesale Funding Costs in the Adverse and Severely Adverse Scenarios
D. Scenario Design Framework and Process for Scenario Publication
1. Inclusion of Salient Risks in Scenarios
2. Scenario Severity
3. Release Date of Scenarios
4. Transparency of Scenario Variables
5. Publication of Scenarios for Notice and Comment
E. Impact Analysis
IV. Administrative Law Matters
A. Use of Plain Language
B. Paperwork Reduction Act Analysis
C. Regulatory Flexibility Act Analysis

I. Background

The Board conducts supervisory stress tests of covered companies and requires those companies to conduct company-run stress tests pursuant to the Dodd-Frank Wall Street Reform Act (Dodd-Frank Act) and the Board's stress test rules.[1] Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct its evaluation of covered companies' post-stress capital under different sets of economic conditions (each set, a scenario). The Board's stress test rules provide that the Board will notify covered companies, by no later than February 15 of each year, of the scenarios that the Board will apply to conduct its annual supervisory stress test and that covered companies must use to conduct their company-run stress tests.[2]

To conduct the supervisory stress tests, the Board develops three scenarios—a baseline, adverse, and severely adverse scenario—and projects a firm's balance sheet, risk-weighted assets, net income, and resulting post-stress capital levels and regulatory capital ratios under each scenario. Similarly, a firm subject to company-run stress tests under the Board's rules uses the same adverse and severely adverse scenarios that apply in the supervisory stress test to conduct a company-run stress test. The scenarios also serve as an input into a covered company's capital plan under the Board's capital plan rule,[3] and the Federal Reserve uses these scenarios to evaluate each firm's capital plan in the supervisory post-stress capital assessment.

On November 29, 2013, the Board adopted a final policy statement on the scenario design framework for stress testing (policy statement).[4] The policy statement outlined the characteristics of the stress test scenarios and explained the considerations and procedures that underlie the formulation of these scenarios. The policy statement describes the baseline, adverse, and severely adverse scenarios, the Board's approach for developing these three macroeconomic scenarios, and the approach for developing any additional components of the stress test scenarios.

As described in the policy statement, the severely adverse scenario is designed to reflect conditions that have characterized post-war U.S. recessions (the recession approach). Historically, recessions typically feature increases in the unemployment rate and contractions in aggregate incomes and economic activity. In light of the typical co-movement of measures of economic activity during economic downturns, such as the unemployment rate and gross domestic product, the Board first specifies a path for the unemployment rate and then develops paths for other measures of activity broadly consistent with the course of the unemployment rate in developing the severely adverse scenario. The policy statement also

[1] 12 CFR part 252, subparts E and F. Covered companies are defined as bank holding companies with average total consolidated assets of $50 billion or more, U.S. intermediate holding companies of foreign banking organizations, and any nonbank financial company supervised by the Board. On July 6, 2018, the Board issued a public statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) (Pub L. No. 115–174, 132 Stat. 1296 (2018)). In this document, the Board stated, consistent with EGRRCPA, that it will not take action to require bank holding companies with total consolidated assets greater than or equal to $50 billion but less than $100 billion to comply with the Board's capital plan rule (12 CFR 225.8) or the Board's supervisory stress test and company-run stress test rules (12 CFR part 252, subparts E and F). *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

[2] 12 CFR 252.44(b); 12 CFR 252.54(b)(1).

[3] 12 CFR 225.8.

[4] 78 FR 71435 (Nov. 29, 2013); see 12 CFR part 252, appendix A.

provides that economic variables included in the scenarios may change over time, or that the Board may augment the recession approach with salient risks.

II. Description of Policy Statement on the Scenario Design Framework for Stress Testing

On December 15, 2017, the Board invited comment on a proposal to revise several aspects of the policy statement. First, the proposal would have modified the current guide in the policy statement for the peak unemployment rate in the severely adverse scenario to include a description of the circumstances in which an increase in the unemployment rate at the lower end of the 3 to 5 percentage point range suggested by the guide would be warranted. Second, the proposal would have added to the policy statement an explicit guide for house prices in the severely adverse scenario based on the ratio of house prices to per capita disposable personal income (HPI-DPI ratio). Third, the proposal would have provided notice that the Board may include variables or additional components in the adverse and severely adverse scenarios to capture the costs of wholesale funds to banking organizations. Finally, the proposal would have amended the policy statement to update references and remove obsolete text.

III. Summary of Comments and Revisions to the Policy Statement on the Scenario Design Framework for Stress Testing

The Board received twelve comment letters in response to the proposal. Commenters included public interest groups, academics, individual banking organizations, and trade and industry groups. Commenters generally expressed support for the proposal, and provided alternative views on certain aspects of the proposed rule, including the inclusion of a stress to wholesale funding in the scenarios.

A. Unemployment Rate in the Severely Adverse Scenario

The Board's approach to the scenario design process is designed to limit procyclicality in the supervisory stress test through scenario design. The policy statement provides that the Board anticipates the unemployment rate in the severely adverse scenario would increase by between 3 and 5 percentage points from its initial level. If a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to at least 10 percent, the path of the unemployment rate in most cases will be specified so as to raise the unemployment rate to at least 10 percent. The policy statement also notes that the typical increase in the unemployment rate in the severely adverse scenario will be about 4 percentage points.

The proposal would have revised the policy statement to include more specific guidance for the change in the unemployment rate when the stress test is conducted during a period in which the unemployment rate is already elevated. In particular, the proposal would have clarified that the Board may adopt an increase in the unemployment rate of less than 4 percentage points when the unemployment rate at the start of the scenarios is elevated but the labor market is judged to be strengthening and higher-than-usual credit losses stemming from previously elevated unemployment rates were either already realized—or were in the process of being realized—and thus removed from banks' balance sheets.[5] The proposed change would have maintained an unemployment rate path in the macroeconomic scenarios broadly similar to the approach used to formulate previous scenarios, except during times in the credit cycle when a smaller change would have been appropriate.

Commenters were generally supportive of the proposed changes to the methods to set the path of the unemployment rate in the severely adverse scenario.[6] The Board is adopting the revisions to the policy statement regarding the unemployment rate guide as proposed.

B. House Prices in the Severely Adverse Scenario

The proposal would have revised the policy statement to include guidance for the path of the nominal house price index in the severely adverse scenario. The nominal house price index is a key variable in the macroeconomic scenarios. Providing explicit guidance for the path of this variable over the planning horizon would limit the procyclicality of the scenarios when initial conditions already reflect stress. This adjustment also would have improved the transparency of the Board's scenario design framework.

The proposal would have established a quantitative guide for house prices, informed by the ratio of the nominal house price index to nominal per capita disposable income (HPI-DPI ratio). The guide incorporates minimum declines in the ratio to ensure that the scenario features stress even when house prices are already depressed, as they were in 2012. Under most circumstances, the Board would have expected the decline in the HPI-DPI ratio in the severely adverse scenario to be 25 percent from its starting value or enough to bring the ratio down to its Great Recession trough, whichever is greater. The Great Recession trough reflects the lowest point in the HPI-DPI ratio since 1976, but is comparable to troughs in the ratio reached in other housing recessions.

Commenters were divided in their views on this aspect of the proposal. One commenter supported the proposal, and asserted that publishing the quantitative guide promotes transparency and reliability. Another commenter asserted that the proposed changes could result in a guide that specifies house prices that are unlikely to be realized and that may be procyclical, as the guide could impose severe declines following a recession characterized by declining house prices.

Another commenter expressed the view that it would be preferable to set the level and change in house prices using different ratios, such as the ratio of house prices to median income or the ratio of house prices to nominal rents, and asserted that the use of per capita income in the ratio that determines the path of house prices does not reflect the affordability of a home for the average family.

The Board's proposed approach to formulating house price paths would allow for levels of severity that may fall outside of U.S. postwar historical experience. As the 2007–2009 financial crisis demonstrated, house prices are difficult to predict. Formulating a house price guide that could lead to a more

[5] Evidence of a strengthening labor market could include a declining unemployment rate, steadily expanding nonfarm payroll employment, or improving labor force participation. Evidence that credit losses were being realized could include elevated charge-offs on loans and leases, loan-loss provisions in excess of gross charge-offs, or other-than-temporary-impairment losses being realized in securities portfolios that include securities that are subject to credit risk.

[6] A commenter requested clarity on an alternative guide for the unemployment rate path considered, described in Question number 1 in the proposed amendments to the policy statement. In the question, the Board described an alternative guide that would require the path of the unemployment rate to reach the lesser of a level 4 percentage points above its level at the beginning of the scenario, or 11 percent. The alternative guide the Board considered was the path of unemployment rate reaching the greater of a level 4 percentage points above its level at the beginning of the scenario, or 11 percent. This guide would have further limited procyclicality in the stress test through scenario design relative to the current unemployment rate guide.

severe decline in house prices than the U.S. has experienced in recent history is an important element of the scenario design process, as the universe of plausible economic stress scenarios is not limited to those that have already occurred.

The proposed guide to specifying the path of house prices would limit procyclicality in the stress test through scenario design, as the scenarios will get less severe as house price growth outstrips income growth or more severe when house price growth lags behind income growth. If, for example, house prices were particularly elevated relative to disposable personal incomes, as is often the case in times of economic expansion, the proposed guide would specify a larger decline in house prices in the scenario, relative to the initial level of house prices, than would a specified fixed decline.

In developing the proposed guide for the path of house prices in the macroeconomic scenario, the Board considered alternative quantitative approaches, including using a long-term trend in the real house price index to compute fair-market value and setting the house price guide based on behavior of real house prices relative to trend. Outcomes under this alternative guide are similar to the path of house prices that would result from adhering to the HPI-DPI guide. The Board also considered basing the quantitative guide for house prices in the severely adverse scenario on the ratio of nominal house prices to nominal rents to assess fair-market value. Historical price-to-rent ratios trend upward over time. The drawback of either of these alternative approaches is the uncertainty and difficulty surrounding estimation of statistical trends.[7] The HPI-DPI ratio is preferable in that respect, as it does not appear to exhibit a trend.

For the reasons stated above and after considering the comments, the Board is adopting the proposed guide for the path of house prices in the severely adverse scenario, consistent with the greater of a decline in the HPI-DPI ratio of 25 percent of its starting value or a decline sufficient to bring the ratio to its Great Recession trough. The introduction of the quantitative guide with both a minimum change in the ratio and a level of severity that the ratio would be required to reach is consistent with the rule for the path of the unemployment rate and will further the Board's goal of limiting procyclicality in the stress test through scenario design. The guide offers a more systematic approach to specifying house price paths than the current approach, while broadly preserving the decline in nominal HPI featured in recent stress testing cycles.

C. Incorporating Short-Term Wholesale Funding Costs in the Adverse and Severely Adverse Scenarios

The proposal would have provided notice that the Board may in the future include variables, or an additional component in the scenarios, to capture the cost of wholesale funds to banking organizations. Including stress to funding costs in the scenarios would account for the impact of increased costs of certain runnable liabilities on net income and capital of banking organizations reliant on short-term wholesale funding in times of economic stress.

Several commenters supported the inclusion of changes in wholesale funding costs in stress scenarios. Commenters expressed the view that not incorporating short-term wholesale funding in past scenarios reflects a significant gap in scenario design. Another commenter who supported inclusion of wholesale funding costs in stress test scenarios suggested that the Board use the liquidity classifications used for the Liquidity Coverage Ratio and the Net Stable Funding Ratio to capture changes in funding costs or availability. One commenter requested that the Board include a run of a certain percentage of firms' funding as part of the stress test, asserting that dependence on runnable funding is a key source of risk that should be examined.

Other commenters sought additional detail about the proposed funding stress, expressing concern that the proposed amendments did not contain sufficient information. A commenter stated that, without additional information, it is unclear whether the funding shock would be duplicative of other regimes that address funding-related risks.

One commenter opposed the inclusion of a wholesale funding stress in the Board's scenarios, and another commenter expressed that implementing the funding stress through a single supervisory model would distort the accuracy and predictability of stress testing exercises. A commenter recommended that the Board proceed with caution when designing any measure of short-term wholesale funding costs for inclusion in supervisory stress testing, and noted that the Board should not rely on the methodology used to calculate the presence of short-term wholesale funding in its Method 2 global systemically important bank (GSIB) surcharge approach.

In response to comments, the Board has determined that it will delay the inclusion of scenario variables or an additional component in the scenarios to capture the cost of wholesale funding costs for banking organizations in the adverse and severely adverse scenarios. Instead, the Board will further explore incorporating a stress to wholesale funding costs in the supervisory stress test. The reliance by banking organizations on certain types of runnable liabilities is a key risk dimension that is not currently addressed in the supervisory stress test, and accordingly, the Board will continue to research appropriate methods for capturing the impact on capital adequacy of changes in wholesale funding conditions under stress.

D. Scenario Design Framework and Process for Scenario Publication

In the proposal, the Board asked questions relating to whether there are other risks that the Board should consider capturing in the scenarios and whether there are other modifications not included in the proposal that could further enhance the scenario development process. In response to these questions, the Board received comments relating to the inclusion of salient risks in the scenarios, the severity of the scenarios, the release date of the scenarios, and the transparency of scenario variables.

1. Inclusion of Salient Risks in Scenarios

Several commenters strongly supported the inclusion of salient market risks in the scenarios in general to make the supervisory stress test sufficiently dynamic. One commenter recommended that the Board incorporate events that are not in the historical record in scenarios, and that the Board allow the list of variables included in the scenarios to change. Similarly, a commenter expressed support for the incorporation in the stress test of shocks unlike those already experienced, since firms should be prepared to withstand events beyond those already endured. The commenter recommended that the Board consider extraordinary shocks, such as a war with North Korea, the collapse of the Bitcoin market, or major losses caused by trader misconduct, in its scenarios.

The current policy statement states that it may be appropriate to augment scenarios with salient risks, as

[7] *See* Rochelle M. Edge and Ralf R. Meisenzahl (2011), ''The Unreliability of Credit-to-GDP Ratio Gaps in Real Time: Implications for Countercyclical Capital Buffers,'' *International Journal of Central Banking,* vol. 7, no. 4, pp. 261–298.

approaches that only look to past recessions or rely only on historical relationships between variables may not always capture current risks to the economic environment.

Since the inception of the supervisory stress test, the Board has included various salient risks in its published scenarios. For example, recent scenarios have included oil price shocks, a severe recession in the euro area, a hard landing in China, stresses in other emerging economies, and stresses in domestic housing and corporate sectors. The salient risks included in the scenarios were not necessarily based on historical record, and were instead relevant to the risk exposures of firms participating in the supervisory stress test and based on economic developments unfolding while the scenarios were being designed. Where appropriate, the Board intends to continue augmenting the scenarios with risks it considers to be salient.

2. Scenario Severity

Commenters expressed views on appropriate levels of scenario severity. Several commenters asserted that maintaining the Board's current scenario design framework, specifically as related to the change in the unemployment rate, would lead to implausible scenarios that are more severe than historical post-war recessions. One commenter asserted that coupling the global market shock and largest counterparty default component with the macroeconomic scenario design framework leads to economic stress scenarios that are particularly implausible. Another commenter expressed support for changing scenarios more aggressively and unexpectedly than the Board's current scenario design framework would specify.

By design, the severity of the scenarios increases as economic conditions improve. This feature of the Board's scenario design framework limits the extent to which scenario design adds sources of procyclicality in the supervisory stress test. A comparison of the severity of recent CCAR scenarios to benchmarks in past recessions or financial crises, both domestic and international, suggests that the scenarios used in the 2017 and 2018 CCAR assessments are plausibly severe.[8]

Additionally, the Board has reviewed the impact of amending the policy statement to clarify its approach to setting the unemployment rate and to establish a quantitative guide for the path of house prices. This impact analysis was included in the proposal to amend the policy statement. The Board concluded that the proposed changes would not have materially enhanced the severity of scenarios had they been in effect in prior stress test cycles. Had the proposed quantitative guide for the path of house prices been in effect in prior stress test cycles, the implied severity of house prices would have been similar to that of the path of house prices included in the scenarios from those stress test cycles published by Board. The amendments to the unemployment rate guide that the Board is adopting in the final policy statement would not increase the severity of the scenarios, as they allow for the possibility of a smaller increase in the unemployment rate than would have been specified in prior cycles if credit losses had already been recognized when the unemployment rate at the start of the scenarios was elevated and the labor market was judged to be strengthening.

3. Release Date of Scenarios

Commenters requested that the Board set a fixed date in early January of each calendar year for the release of the scenarios and additional components used in the stress test. Another commenter expressed strong support for scenario disclosure after the effective date of the supervisory stress test, when firms' positions are fixed.

The effective date of the supervisory stress test is December 31, and the Board publishes final scenarios after December 31 but no later than February 15, as required under the Board's stress test rules.[9] Given the need to appropriately incorporate data from major data releases and other information released prior to scenario publication into the final scenarios, it is infeasible for the Board to publish the scenarios in early January.

4. Transparency of Scenario Variables

A commenter asserted that some core input variables the Board publishes in its scenarios are insufficiently transparent to the public, and recommended that the Board release historical revisions and latest actuals for core variables more frequently.

With the release of the CCAR 2018 scenarios, the Board modified the public document that describes sources of scenario variables. The note regarding scenario variables provided more details on data sources, and described how each variable series can be retrieved from the source and replicated. For example, the Board enhanced the transparency of its description of its U.S. mortgage rate series, which now explains that the quarterly average of the weekly series for the interest rate of a conventional, conforming, 30-year fixed-rate mortgage is obtained from the Primary Mortgage Market Survey of the Federal Home Loan Mortgage Corporation.

5. Publication of Scenarios for Notice and Comment

Commenters expressed opposing views regarding the publication of the Board's scenarios for notice and comment. One commenter asserted that a fully transparent scenario would allow the Board to best achieve public benefits of disclosure. Another commenter requested that the Board maintain its current practice of disclosing scenarios only after banks' portfolios are fixed, as disclosure of the scenarios prior to the effective date of the stress test could incent firms to modify their businesses to change the results of the stress test without changing the risks that firms face. This commenter expressed the view that the stress test would yield useful information and encourage firms to maintain a prudent framework for capital planning as long as the Board does not disclose scenarios for comment before the effective date of the stress test.

The Board is considering these comments and weighing the costs and benefits of publishing the scenarios for comment.

E. Impact Analysis

The amendments to the policy statement will not materially affect the severity of the scenarios. The inclusion of a stress to wholesale funding, which would have been expected to increase the stringency of the stress test, will be delayed, as noted.

The unemployment rate clarification will reduce the stringency of the scenario if the economy had already experienced stress and was recovering, and will not impact the stringency of the scenario at other points during the economic cycle. The house price guide formalizes an approach that was previously judgmental with little persistent impact on the severity of the stress to house prices in the severely adverse scenario. However, the element of the house price guide that would limit procyclicality in the stress test through the scenario would increase the severity of the scenario stress to house

[8] *See* Bora Durdu, Rochelle Edge, and Daniel Schwindt (2017), ''Measuring the Severity of Stress-Test Scenarios,'' FEDS Notes (Washington: Board of Governors of the Federal Reserve System, May 5), *https://www.federalreserve.gov/econres/notes/feds-notes/measuring-the-severity-of-stress-test-scenarios-20170505.htm.*

[9] 12 CFR 252.54(b)(1).

prices when the ratio of house prices to disposable personal income is particularly elevated at the start of the stress test.

IV. Administrative Law Matters

A. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board received no comments on these matters and believes the final policy statement is written plainly and clearly.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final policy statement.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis (IRFA).[10] The Board solicited public comment on this policy statement in a notice of proposed rulemaking [11] and has since considered the potential impact of this policy statement on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The FRFA must contain: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency.

The final policy statement adopts changes to the Board's policy statement on the scenario design framework for stress testing. The final policy statement clarifies that the Board may adopt a change in the unemployment rate in the severely adverse scenario of less than 4 percentage points under certain economic conditions and institutes a quantitative guide for the change in the house price index in the severely adverse scenario. Commenters did not raise any issues in response to the IRFA. In addition, the Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed policy statement.

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organizations).[12] As discussed in the **SUPPLEMENTARY INFORMATION**, the final policy statement generally would apply to bank holding companies with total consolidated assets of $100 billion or more and U.S. intermediate holding companies of foreign banking, which generally have at least total consolidated assets of $50 billion or more.

Companies that are subject to the final policy statement therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the final policy statement does not apply to any company with assets of $550 million or less, the final policy statement would not apply to any ''small entity'' for purposes of the RFA.

There are no projected reporting, recordkeeping, or other compliance requirements associated with the final policy statement. As discussed above, the final policy statement does not apply to small entities.

The Board does not believe that the final policy statement duplicates, overlaps, or conflicts with any other Federal Rules. In addition, the Board does not believe there are significant alternatives to the final policy statement that have less economic impact on small entities. In light of the foregoing, the Board does not believe the final policy statement will have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Nonbank Financial Companies Supervised by the Board, Reporting and recordkeeping requirements, Securities, Stress Testing.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 252 as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Appendix A to part 252 is revised to read as follows:

Appendix A to Part 252—Policy Statement on the Scenario Design Framework for Stress Testing

1. Background

(a) The Board has imposed stress testing requirements through its regulations (stress test rules) implementing section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and through its capital plan rule (12 CFR 225.8). Under the stress test rules issued under section 165(i)(1) of the Act, the Board conducts an annual stress test (supervisory stress tests), on a consolidated basis, of each bank holding company with total consolidated assets of $100 billion or more, intermediate holding company of a foreign banking organization, and nonbank financial company that the Financial Stability Oversight Council has designated for supervision by the Board (together, covered companies).[1] In addition, under the stress test rules issued under section 165(i)(2) of the Act, covered companies must conduct stress tests semi-annually and other financial companies with total consolidated assets of

[10] *See* 5 U.S.C. 603, 604 and 605.

[11] 82 FR 59533 (Dec. 15, 2017).

[12] *See* 13 CFR 121.201.

[1] 12 U.S.C. 5365(i)(1); 12 CFR part 252, subpart E.

more than $10 billion and for which the Board is the primary regulatory agency must conduct stress tests on an annual basis (together, company-run stress tests).[2] The Board will provide for at least three different sets of conditions (each set, a scenario), including baseline, adverse, and severely adverse scenarios for both supervisory and company-run stress tests (macroeconomic scenarios).[3]

(b) The stress test rules provide that the Board will notify covered companies by no later than February 15 of each year of the scenarios it will use to conduct its annual supervisory stress tests and provide, also by no later than February 15, covered companies and other financial companies subject to the final rules the set of scenarios they must use to conduct their annual company-run stress tests. Under the stress test rules, the Board may require certain companies to use additional components in the adverse or severely adverse scenario or additional scenarios. For example, the Board expects to require large banking organizations with significant trading activities to include a trading and counterparty component (market shock, described in the following sections) in their adverse and severely adverse scenarios. The Board will provide any additional components or scenario by no later than March 1 of each year.[4] The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

(c) In addition, § 225.8 of the Board's Regulation Y (capital plan rule) requires covered companies to submit annual capital plans, including stress test results, to the Board in order to allow the Board to assess whether they have robust, forward-looking capital planning processes and have sufficient capital to continue operations throughout times of economic and financial stress.[5]

(d) Stress tests required under the stress test rules and under the capital plan rule require the Board and financial companies to calculate pro-forma capital levels—rather than ''current'' or actual levels—over a specified planning horizon under baseline and stressful scenarios. This approach integrates key lessons of the 2007–2009 financial crisis into the Board's supervisory framework. During the financial crisis, investor and counterparty confidence in the capitalization of financial companies eroded rapidly in the face of changes in the current and expected economic and financial conditions, and this loss in market confidence imperiled companies' ability to access funding, continue operations, serve as a credit intermediary, and meet obligations to creditors and counterparties. Importantly, such a loss in confidence occurred even when a financial institution's capital ratios were in excess of regulatory minimums. This is because the institution's capital ratios were perceived as lagging indicators of its financial condition, particularly when conditions were changing.

(e) The stress tests required under the stress test rules and capital plan rule are a valuable supervisory tool that provide a forward-looking assessment of large financial companies' capital adequacy under hypothetical economic and financial market conditions. Currently, these stress tests primarily focus on credit risk and market risk—that is, risk of mark-to-market losses associated with companies' trading and counterparty positions—and not on other types of risk, such as liquidity risk. Pressures stemming from these sources are considered in separate supervisory exercises. No single supervisory tool, including the stress tests, can provide an assessment of a company's ability to withstand every potential source of risk.

(f) Selecting appropriate scenarios is an especially significant consideration for stress tests required under the capital plan rule, which ties the review of a company's performance under stress scenarios to its ability to make capital distributions. More severe scenarios, all other things being equal, generally translate into larger projected declines in banks' capital. Thus, a company would need more capital today to meet its minimum capital requirements in more stressful scenarios and have the ability to continue making capital distributions, such as common dividend payments. This translation is far from mechanical, however; it will depend on factors that are specific to a given company, such as underwriting standards and the company's business model, which would also greatly affect projected revenue, losses, and capital.

2. Overview and Scope

(a) This policy statement provides more detail on the characteristics of the stress test scenarios and explains the considerations and procedures that underlie the approach for formulating these scenarios. The considerations and procedures described in this policy statement apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts B, E, and F as well as the Board's capital plan rule (12 CFR 225.8).[6]

(b) Although the Board does not envision that the broad approach used to develop scenarios will change from year to year, the stress test scenarios will reflect changes in the outlook for economic and financial conditions and changes to specific risks or vulnerabilities that the Board, in consultation with the other federal banking agencies, determines should be considered in the annual stress tests. The stress test scenarios should not be regarded as forecasts; rather, they are hypothetical paths of economic variables that will be used to assess the strength and resilience of the companies' capital in various economic and financial environments.

(c) The remainder of this policy statement is organized as follows. Section 3 provides a broad description of the baseline, adverse, and severely adverse scenarios and describes the types of variables that the Board expects to include in the macroeconomic scenarios and the market shock component of the stress test scenarios applicable to companies with significant trading activity. Section 4 describes the Board's approach for developing the macroeconomic scenarios, and section 5 describes the approach for the market shocks. Section 6 describes the relationship between the macroeconomic scenario and the market shock components. Section 7 provides a timeline for the formulation and publication of the macroeconomic assumptions and market shocks.

3. Content of the Stress Test Scenarios

(a) The Board will publish a minimum of three different scenarios, including baseline, adverse, and severely adverse conditions, for use in stress tests required in the stress test rules.[7] In general, the Board anticipates that it will not issue additional scenarios. Specific circumstances or vulnerabilities that in any given year the Board determines require particular vigilance to ensure the resilience of the banking sector will be captured in either the adverse or severely adverse scenarios. A greater number of scenarios could be needed in some years—for example, because the Board identifies a large number of unrelated and uncorrelated but nonetheless significant risks.

(b) While the Board generally expects to use the same scenarios for all companies subject to the final rule, it may require a subset of companies— depending on a company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy—to include additional scenario components or additional scenarios that are designed to capture different effects of adverse events on revenue, losses, and capital. One example of such components is the market shock that applies only to companies with significant trading activity. Additional components or scenarios may also include other stress factors that may not necessarily be directly correlated to macroeconomic or financial assumptions but nevertheless can materially affect companies' risks, such as the unexpected default of a major counterparty.

(c) Early in each stress testing cycle, the Board plans to publish the macroeconomic

[2] 12 U.S.C. 5365(i)(2); 12 CFR part 252, subparts B and F.

[3] The stress test rules define scenarios as those sets of conditions that affect the U.S. economy or the financial condition of a company that the Board annually determines are appropriate for use in stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios. The stress test rules define baseline scenario as a set of conditions that affect the U.S. economy or the financial condition of a company and that reflect the consensus views of the economic and financial outlook. The stress test rules define adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a company that are more adverse than those associated with the baseline scenario and may include trading or other additional components. The stress test rules define severely adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components. *See* 12 CFR part 252.

[4] *Id.*

[5] *See* 12 CFR 225.8.

[6] 12 CFR 252.14(a), 12 CFR 252.44(a), 12 CFR 252.54(a).

[7] 12 CFR 252.14(b), 12 CFR 252.44(b), 12 CFR 252.54(b).

scenarios along with a brief narrative summary that provides a description of the economic situation underlying the scenario and explains how the scenarios have changed relative to the previous year. In addition, to assist companies in projecting the paths of additional variables in a manner consistent with the scenario, the narrative will also provide descriptions of the general path of some additional variables. These descriptions will be general—that is, they will describe developments for broad classes of variables rather than for specific variables—and will specify the intensity and direction of variable changes but not numeric magnitudes. These descriptions should provide guidance that will be useful to companies in specifying the paths of the additional variables for their company-run stress tests. Note that in practice it will not be possible for the narrative to include descriptions on all of the additional variables that companies may need for their company-run stress tests. In cases where scenarios are designed to reflect particular risks and vulnerabilities, the narrative will also explain the underlying motivation for these features of the scenario. The Board also plans to release a broad description of the market shock components.

3.1 Macroeconomic Scenarios

(a) The macroeconomic scenarios will consist of the future paths of a set of economic and financial variables.[8] The economic and financial variables included in the scenarios will likely comprise those included in the ''2014 Supervisory Scenarios for Annual Stress Tests Required under the Dodd-Frank Act Stress Testing Rules and the Capital Plan Rule'' (2013 supervisory scenarios). The domestic U.S. variables provided for in the 2013 supervisory scenarios included:

(i) Six measures of economic activity and prices: Real and nominal gross domestic product (GDP) growth, the unemployment rate of the civilian non-institutional population aged 16 and over, real and nominal disposable personal income growth, and the Consumer Price Index (CPI) inflation rate;

(ii) Four measures of developments in equity and property markets: The Core Logic National House Price Index, the National Council for Real Estate Investment Fiduciaries Commercial Real Estate Price Index, the Dow Jones Total Stock Market Index, and the Chicago Board Options Exchange Market Volatility Index; and

(iii) Six measures of interest rates: The rate on the 3-month Treasury bill, the yield on the 5-year Treasury bond, the yield on the 10-year Treasury bond, the yield on a 10-year BBB corporate security, the prime rate, and the interest rate associated with a conforming, conventional, fixed-rate, 30-year mortgage.

(b) The international variables provided for in the 2014 supervisory scenarios included, for the euro area, the United Kingdom, developing Asia, and Japan:

(i) Percent change in real GDP;

(ii) Percent change in the Consumer Price Index or local equivalent; and

(iii) The U.S./foreign currency exchange rate.[9]

(c) The economic variables included in the scenarios influence key items affecting financial companies' net income, including pre-provision net revenue and credit losses on loans and securities. Moreover, these variables exhibit fairly typical trends in adverse economic climates that can have unfavorable implications for companies' net income and, thus, capital positions.

(d) The economic variables included in the scenario may change over time. For example, the Board may add variables to a scenario if the international footprint of companies that are subject to the stress testing rules changed notably over time such that the variables already included in the scenario no longer sufficiently capture the material risks of these companies. Alternatively, historical relationships between macroeconomic variables could change over time such that one variable (*e.g.,* disposable personal income growth) that previously provided a good proxy for another (*e.g.,* light vehicle sales) in modeling companies' pre-provision net revenue or credit losses ceases to do so, resulting in the need to create a separate path, or alternative proxy, for the other variable. However, recognizing the amount of work required for companies to incorporate the scenario variables into their stress testing models, the Board expects to eliminate variables from the scenarios only in rare instances.

(e) The Board expects that the company may not use all of the variables provided in the scenario, if those variables are not appropriate to the company's line of business, or may add additional variables, as appropriate. The Board expects the companies to ensure that the paths of such additional variables are consistent with the scenarios the Board provided. For example, the companies may use, as part of their internal stress test models, local-level variables, such as state-level unemployment rates or city-level house prices. While the Board does not plan to include local-level macro variables in the stress test scenarios it provides, it expects the companies to evaluate the paths of local-level macro variables as needed for their internal models, and ensure internal consistency between these variables and their aggregate, macro-economic counterparts. The Board will provide the macroeconomic scenario component of the stress test scenarios for a period that spans a minimum of 13 quarters. The scenario horizon reflects the supervisory stress test approach that the Board plans to use. Under the stress test rules, the Board will assess the effect of different scenarios on the consolidated capital of each company over a forward-looking planning horizon of at least nine quarters.

3.2 Market Shock Component

(a) The market shock component of the adverse and severely adverse scenarios will only apply to companies with significant trading activity and their subsidiaries.[10] The component consists of large moves in market prices and rates that would be expected to generate losses. Market shocks differ from macroeconomic scenarios in a number of ways, both in their design and application. For instance, market shocks that might typically be observed over an extended period (*e.g.,* 6 months) are assumed to be an instantaneous event which immediately affects the market value of the companies' trading assets and liabilities. In addition, under the stress test rules, the as-of date for market shocks will differ from the quarter-end, and the Board will provide the as-of date for market shocks no later than February 1 of each year. Finally, as described in section 4 of this Appendix, the market shock includes a much larger set of risk factors than the set of economic and financial variables included in macroeconomic scenarios. Broadly, these risk factors include shocks to financial market variables that affect asset prices, such as a credit spread or the yield on a bond, and, in some cases, the value of the position itself (*e.g.,* the market value of private equity positions).

(b) The Board envisions that the market shocks will include shocks to a broad range of risk factors that are similar in granularity to those risk factors that trading companies use internally to produce profit and loss estimates, under stressful market scenarios, for all asset classes that are considered trading assets, including equities, credit, interest rates, foreign exchange rates, and commodities. Examples of risk factors include, but are not limited to:

(i) Equity indices of all developed markets, and of developing and emerging market nations to which companies with significant trading activity may have exposure, along with term structures of implied volatilities;

(ii) Cross-currency FX rates of all major and many minor currencies, along term structures of implied volatilities;

(iii) Term structures of government rates (*e.g.,* U.S. Treasuries), interbank rates (*e.g.,* swap rates) and other key rates (*e.g.,* commercial paper) for all developed markets and for developing and emerging market nations to which companies may have exposure;

(iv) Term structures of implied volatilities that are key inputs to the pricing of interest rate derivatives;

(v) Term structures of futures prices for energy products including crude oil (differentiated by country of origin), natural gas, and power;

(vi) Term structures of futures prices for metals and agricultural commodities;

[8] The future path of a variable refers to its specification over a given time period. For example, the path of unemployment can be described in percentage terms on a quarterly basis over the stress testing time horizon.

[9] The Board may increase the range of countries or regions included in future scenarios, as appropriate.

[10] Currently, companies with significant trading activity include any bank holding company or intermediate holding company that (1) has aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a large and noncomplex firm.. The Board may also subject a state member bank subsidiary of any such bank holding company to the market shock component. The set of companies subject to the market shock component could change over time as the size, scope, and complexity of financial company's trading activities evolve.

(vii) ''Value-drivers'' (credit spreads or instrument prices themselves) for credit-sensitive product segments including: Corporate bonds, credit default swaps, and collateralized debt obligations by risk; non-agency residential mortgage-backed securities and commercial mortgage-backed securities by risk and vintage; sovereign debt; and, municipal bonds; and

(viii) Shocks to the values of private equity positions.

4. Approach for Formulating the Macroeconomic Assumptions for Scenarios

(a) This section describes the Board's approach for formulating macroeconomic assumptions for each scenario. The methodologies for formulating this part of each scenario differ by scenario, so these methodologies for the baseline, severely adverse, and the adverse scenarios are described separately in each of the following subsections.

(b) In general, the baseline scenario will reflect the most recently available consensus views of the macroeconomic outlook expressed by professional forecasters, government agencies, and other public-sector organizations as of the beginning of the annual stress-test cycle. The severely adverse scenario will consist of a set of economic and financial conditions that reflect the conditions of post-war U.S. recessions. The adverse scenario will consist of a set of economic and financial conditions that are more adverse than those associated with the baseline scenario but less severe than those associated with the severely adverse scenario.

(c) Each of these scenarios is described further in sections below as follows: Baseline (subsection 4.1), severely adverse (subsection 4.2), and adverse (subsection 4.3)

4.1 Approach for Formulating Macroeconomic Assumptions in the Baseline Scenario

(a) The stress test rules define the baseline scenario as a set of conditions that affect the U.S. economy or the financial condition of a banking organization, and that reflect the consensus views of the economic and financial outlook. Projections under a baseline scenario are used to evaluate how companies would perform in more likely economic and financial conditions. The baseline serves also as a point of comparison to the severely adverse and adverse scenarios, giving some sense of how much of the company's capital decline could be ascribed to the scenario as opposed to the company's capital adequacy under expected conditions.

(b) The baseline scenario will be developed around a macroeconomic projection that captures the prevailing views of private-sector forecasters (*e.g.* Blue Chip Consensus Forecasts and the Survey of Professional Forecasters), government agencies, and other public-sector organizations (*e.g.,* the International Monetary Fund and the Organization for Economic Co-operation and Development) near the beginning of the annual stress-test cycle. The baseline scenario is designed to represent a consensus expectation of certain economic variables over the time period of the tests and it is not the Board's internal forecast for those economic variables. For example, the baseline path of short-term interest rates is constructed from consensus forecasts and may differ from that implied by the FOMC's *Summary of Economic Projections.*

(c) For some scenario variables—such as U.S. real GDP growth, the unemployment rate, and the consumer price index—there will be a large number of different forecasts available to project the paths of these variables in the baseline scenario. For others, a more limited number of forecasts will be available. If available forecasts diverge notably, the baseline scenario will reflect an assessment of the forecast that is deemed to be most plausible. In setting the paths of variables in the baseline scenario, particular care will be taken to ensure that, together, the paths present a coherent and plausible outlook for the U.S. and global economy, given the economic climate in which they are formulated.

4.2 Approach for Formulating the Macroeconomic Assumptions in the Severely Adverse Scenario

The stress test rules define a severely adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a financial company and that overall are more severe than those associated with the adverse scenario. The financial company will be required to publicly disclose a summary of the results of its stress test under the severely adverse scenario, and the Board intends to publicly disclose the results of its analysis of the financial company under the adverse scenario and the severely adverse scenario.

4.2.1 General Approach: The Recession Approach

(a) The Board intends to use a recession approach to develop the severely adverse scenario. In the recession approach, the Board will specify the future paths of variables to reflect conditions that characterize post-war U.S. recessions, generating either a typical or specific recreation of a post-war U.S. recession. The Board chose this approach because it has observed that the conditions that typically occur in recessions—such as increasing unemployment, declining asset prices, and contracting loan demand—can put significant stress on companies' balance sheets. This stress can occur through a variety of channels, including higher loss provisions due to increased delinquencies and defaults; losses on trading positions through sharp moves in market prices; and lower bank income through reduced loan originations. For these reasons, the Board believes that the paths of economic and financial variables in the severely adverse scenario should, at a minimum, resemble the paths of those variables observed during a recession.

(b) This approach requires consideration of the type of recession to feature. All post-war U.S. recessions have not been identical: Some recessions have been associated with very elevated interest rates, some have been associated with sizable asset price declines, and some have been relatively more global. The most common features of recessions, however, are increases in the unemployment rate and contractions in aggregate incomes and economic activity. For this and the following reasons, the Board intends to use the unemployment rate as the primary basis for specifying the severely adverse scenario. First, the unemployment rate is likely the most representative single summary indicator of adverse economic conditions. Second, in comparison to GDP, labor market data have traditionally featured more prominently than GDP in the set of indicators that the National Bureau of Economic Research reviews to inform its recession dates.[11] Third and finally, the growth rate of potential output can cause the size of the decline in GDP to vary between recessions. While changes in the unemployment rate can also vary over time due to demographic factors, this seems to have more limited implications over time relative to changes in potential output growth. The unemployment rate used in the severely adverse scenario will reflect an unemployment rate that has been observed in *severe* post-war U.S. recessions, measuring severity by the absolute level of and relative increase in the unemployment rate.[12]

(c) The Board believes that the severely adverse scenario should also reflect a housing recession. The house prices path set in the severely adverse scenario will reflect developments that have been observed in post-war U.S. housing recessions, measuring severity by the absolute level of and relative decrease in the house prices.

(d) The Board will specify the paths of most other macroeconomic variables based on the paths of unemployment, income, house prices, and activity. Some of these other variables, however, have taken wildly divergent paths in previous recessions (*e.g.,* foreign GDP), requiring the Board to use its informed judgment in selecting appropriate paths for these variables. In general, the path for these other variables will be based on their underlying structure at the time that the scenario is designed (*e.g.,* economic or financial-system vulnerabilities in other countries).

(e) The Board considered alternative methods for scenario design of the severely adverse scenario, including a probabilistic approach. The probabilistic approach constructs a baseline forecast from a large-scale macroeconomic model and identifies a scenario that would have a specific probabilistic likelihood given the baseline forecast. The Board believes that, at this time, the recession approach is better suited for developing the severely adverse scenario than a probabilistic approach because it guarantees a recession of some specified

[11] More recently, a monthly measure of GDP has been added to the list of indicators.

[12] Even though all recessions feature increases in the unemployment rate and contractions in incomes and economic activity, the size of this change has varied over post-war U.S. recessions. Table 1 documents the variability in the depth of post-war U.S. recessions. Some recessions—labeled mild in Table 1—have been relatively modest with GDP edging down just slightly and the unemployment rate moving up about a percentage point. Other recessions—labeled severe in Table 1—have been much harsher with GDP dropping 3¾ percent and the unemployment rate moving up a total of about 4 percentage points.

severity. In contrast, the probabilistic approach requires the choice of an extreme tail outcome—relative to baseline—to characterize the severely adverse scenario (*e.g.,* a 5 percent or a 1 percent tail outcome). In practice, this choice is difficult as adverse economic outcomes are typically thought of in terms of how variables evolve in an absolute sense rather than how far away they lie in the probability space away from the baseline. In this sense, a scenario featuring a recession may be somewhat clearer and more straightforward to communicate. Finally, the probabilistic approach relies on estimates of uncertainty around the baseline scenario and such estimates are in practice model-dependent.

4.2.2 Setting the Unemployment Rate Under the Severely Adverse Scenario

(a) The Board anticipates that the severely adverse scenario will feature an unemployment rate that increases between 3 to 5 percentage points from its initial level over the course of 6 to 8 calendar quarters.[13] The initial level will be set based on the conditions at the time that the scenario is designed. However, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to at least 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate in most cases will be specified so as to raise the unemployment rate to at least 10 percent.

(b) This methodology is intended to generate scenarios that feature stressful outcomes but do not induce greater procyclicality in the financial system and macroeconomy. When the economy is in the early stages of a recovery, the unemployment rate in a baseline scenario generally trends downward, resulting in a larger difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively more intense. Conversely, in a sustained strong expansion—when the unemployment rate may be below the level consistent with full employment—the unemployment in a baseline scenario generally trends upward, resulting in a smaller difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively less intense. Historically, a 3 to 5 percentage point increase in unemployment rate is reflective of stressful conditions. As illustrated in Table 1, over the last half-century, the U.S. economy has experienced four severe post-war recessions. In all four of these recessions, the unemployment rate increased 3 to 5 percentage points and in the three most recent of these recessions, the unemployment rate reached a level between 9 percent and 11 percent.

(c) Under this method, if the initial unemployment rate was low—as it would be after a sustained long expansion—the unemployment rate in the scenario would increase to a level as high as what has been seen in past severe recessions. However, if the initial unemployment rate was already high—as would be the case in the early stages of a recovery—the unemployment rate would exhibit a change as large as what has been seen in past severe recessions.

(d) The Board believes that the typical increase in the unemployment rate in the severely adverse scenario will be about 4 percentage points. However, the Board will calibrate the increase in unemployment based on its views of the status of cyclical systemic risk. The Board intends to set the unemployment rate at the higher end of the range if the Board believes that cyclical systemic risks are high (as it would be after a sustained long expansion), and to the lower end of the range if cyclical systemic risks are low (as it would be in the earlier stages of a recovery). This may result in a scenario that is slightly more intense than normal if the Board believed that cyclical systemic risks were increasing in a period of robust expansion.[14] Conversely, it will allow the Board to specify a scenario that is slightly less intense than normal in an environment where systemic risks appeared subdued, such as in the early stages of an expansion. Indeed, the Board expects that, in general, it will adopt a change in the unemployment rate of less than 4 percentage points when the unemployment rate at the start of the scenarios is elevated but the labor market is judged to be strengthening and higher-than-usual credit losses stemming from previously elevated unemployment rates were either already realized—or are in the process of being realized—and thus removed from banks' balance sheets.[15] However, even at the lower end of the range of unemployment-rate increases, the scenario will still feature an increase in the unemployment rate similar to what has been seen in about half of the severe recessions of the last 50 years.

(e) As indicated previously, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate will be specified so as to raise the unemployment rate to 10 percent. Setting a floor for the unemployment rate at 10 percent recognizes the fact that not only do cyclical systemic risks build up at financial intermediaries during robust expansions but that these risks are also easily obscured by the buoyant environment.

(f) In setting the increase in the unemployment rate, the Board will consider the extent to which analysis by economists, supervisors, and financial market experts finds cyclical systemic risks to be elevated (but difficult to be captured more precisely in one of the scenario's other variables). In addition, the Board—in light of impending shocks to the economy and financial system—will also take into consideration the extent to which a scenario of some increased severity might be necessary for the results of the stress test and the associated supervisory actions to sustain confidence in financial institutions.

(g) While the approach to specifying the severely adverse scenario is designed to avoid adding sources of procyclicality to the financial system, it is not designed to explicitly offset any existing procyclical tendencies in the financial system. The purpose of the stress test scenarios is to make sure that the companies are properly capitalized to withstand severe economic and financial conditions, not to serve as an explicit countercyclical offset to the financial system.

(h) In developing the approach to the unemployment rate, the Board also considered a method that would increase the unemployment rate to some fairly elevated fixed level over the course of 6 to 8 quarters. This would result in scenarios being more severe in robust expansions (when the unemployment rate is low) and less severe in the early stages of a recovery (when the unemployment rate is high) and so would not result in pro-cyclicality. Depending on the initial level of the unemployment rate, this approach could lead to only a very modest increase in the unemployment rate—or even a decline. As a result, this approach—while not procyclical—could result in scenarios not featuring stressful macroeconomic outcomes.

4.2.3 Setting the Other Variables in the Severely Adverse Scenario

(a) Generally, all other variables in the severely adverse scenario will be specified to be consistent with the increase in the unemployment rate. The approach for specifying the paths of these variables in the scenario will be a combination of (1) how economic models suggest that these variables should evolve given the path of the unemployment rate, (2) how these variables have typically evolved in past U.S. recessions, and (3) evaluation of these and other factors.

(b) Economic models—such as medium-scale macroeconomic models—should be able to generate plausible paths consistent with the unemployment rate for a number of scenario variables, such as real GDP growth, CPI inflation and short-term interest rates, which have relatively stable (direct or indirect) relationships with the unemployment rate (*e.g.,* Okun's Law, the Phillips Curve, and interest rate feedback rules). For some other variables, specifying their paths will require a case-by-case consideration.

(c) Declining house prices, which are an important source of stress to a company's balance sheet, are not a steadfast feature of

[13] Six to eight quarters is the average number of quarters for which a severe recession lasts plus the average number of subsequent quarters over which the unemployment rate continues to rise. The variable length of the timeframe reflects the different paths to the peak unemployment rate depending on the severity of the scenario.

[14] Note, however, that the severity of the scenario would not exceed an implausible level: Even at the upper end of the range of unemployment-rate increases, the path of the unemployment rate would still be consistent with severe post-war U.S. recessions.

[15] Evidence of a strengthening labor market could include a declining unemployment rate, steadily expanding nonfarm payroll employment, or improving labor force participation. Evidence that credit losses are being realized could include elevated charge-offs on loans and leases, loan-loss provisions in excess of gross charge-offs, or losses being realized in securities portfolios that include securities that are subject to credit risk.

recessions, and the historical relationship of house prices with the unemployment rate is not strong. Simply adopting their typical path in a severe recession would likely underestimate risks stemming from the housing sector. In specifying the path for nominal house prices, the Board will consider the ratio of the nominal house price index (HPI) to nominal, per capita, disposable income (DPI). The Board believes that the typical decline in the HPI-DPI ratio will be at a minimum 25 percent from its starting value, or enough to bring the ratio down to its Great Recession trough. As illustrated in Table 2, housing recessions have on average featured HPI-DPI ratio declines of about 25 percent and the HPI-DPI ratio fell to its Great Recession trough.[16]

(d) In addition, judgment is necessary in projecting the path of a scenario's international variables. Recessions that occur simultaneously across countries are an important source of stress to the balance sheets of companies with notable international exposures but are not an invariable feature of the international economy. As a result, simply adopting the typical path of international variables in a severe U.S. recession would likely underestimate the risks stemming from the international economy. Consequently, an approach that uses both judgment and economic models informs the path of international variables.

4.2.4 Adding Salient Risks to the Severely Adverse Scenario

(a) The severely adverse scenario will be developed to reflect specific risks to the economic and financial outlook that are especially salient but will feature minimally in the scenario if the Board were only to use approaches that looked to past recessions or relied on historical relationships between variables.

(b) There are some important instances when it will be appropriate to augment the recession approach with salient risks. For example, if an asset price were especially elevated and thus potentially vulnerable to an abrupt and potentially destabilizing decline, it would be appropriate to include such a decline in the scenario even if such a large drop were not typical in a severe recession. Likewise, if economic developments abroad were particularly unfavorable, assuming a weakening in international conditions larger than what typically occurs in severe U.S. recessions would likely also be appropriate.

(c) Clearly, while the recession component of the severely adverse scenario is within some predictable range, the salient risk aspect of the scenario is far less so, and therefore, needs an annual assessment. Each year, the Board will identify the risks to the financial system and the domestic and international economic outlooks that appear more elevated than usual, using its internal analysis and supervisory information and in consultation with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). Using the same information, the Board will then calibrate the paths of the macroeconomic and financial variables in the scenario to reflect these risks.

(d) Detecting risks that have the potential to weaken the banking sector is particularly difficult when economic conditions are buoyant, as a boom can obscure the weaknesses present in the system. In sustained robust expansions, therefore, the selection of salient risks to augment the scenario will err on the side of including risks of uncertain significance.

(e) The Board will factor in particular risks to the domestic and international macroeconomic outlook identified by its economists, bank supervisors, and financial market experts and make appropriate adjustments to the paths of specific economic variables. These adjustments will not be reflected in the general severity of the recession and, thus, all macroeconomic variables; rather, the adjustments will apply to a subset of variables to reflect co-movements in these variables that are historically less typical. The Board plans to discuss the motivation for the adjustments that it makes to variables to highlight systemic risks in the narrative describing the scenarios.[17]

4.3 Approach for Formulating Macroeconomic Assumptions in the Adverse Scenario

(a) The adverse scenario can be developed in a number of different ways, and the selected approach will depend on a number of factors, including how the Board intends to use the results of the adverse scenario.[18] Generally, the Board believes that the companies should consider multiple adverse scenarios for their internal capital planning purposes, and likewise, it is appropriate that the Board consider more than one adverse scenario to assess a company's ability to withstand stress. Accordingly, the Board does not identify a single approach for specifying the adverse scenario. Rather, the adverse scenario will be formulated according to one of the possibilities listed below. The Board may vary the approach it uses for the adverse scenario each year so that the results of the scenario provide the most value to supervisors, in light of the current condition of the economy and the financial services industry.

(b) The simplest method to specify the adverse scenario is to develop a less severe version of the severely adverse scenario. For example, the adverse scenario could be formulated such that the deviations of the paths of the variables relative to the baseline were simply one-half of or two-thirds of the deviations of the paths of the variables relative to the baseline in the severely adverse scenario. *A priori,* specifying the adverse scenario in this way may appear unlikely to provide the greatest possible informational value to supervisors—given that it is just a less severe version of the severely adverse scenario. However, to the extent that the effect of macroeconomic variables on company loss positions and incomes are nonlinear, there could be potential value from this approach.

(c) Another method to specify the adverse scenario is to capture risks in the adverse scenario that the Board believes should be better understood or should be monitored, but does not believe should be included in the severely adverse scenario, perhaps because these risks would render the scenario implausibly severe. For instance, the adverse scenario could feature sizable increases in oil or natural gas prices or shifts in the yield curve that are atypical in a recession. The adverse scenario might also feature less acute, but still consequential, adverse outcomes, such as a disruptive slowdown in growth from emerging-market economies.

(d) Under the Board's stress test rules, covered companies are required to develop their own scenarios for mid-cycle company-run stress tests.[19] A particular combination of risks included in these scenarios may inform the design of the adverse scenario for annual stress tests. In this same vein, another possibility would be to use modified versions of the circumstances that companies describe in their living wills as being able to cause their failures.

(e) It might also be informative to periodically use a stable adverse scenario, at least for a few consecutive years. Even if the scenario used for the stress test does not change over the credit cycle, if companies tighten and relax lending standards over the cycle, their loss rates under the adverse scenario—and indirectly the projected changes to capital—would decrease and increase, respectively. A consistent scenario would allow the direct observation of how capital fluctuates to reflect growing cyclical risks.

(f) The Board may consider specifying the adverse scenario using the probabilistic approach described in section 4.2.1 (that is, with a specified lower probability of occurring than the severely adverse scenario but a greater probability of occurring than the baseline scenario). The approach has some intuitive appeal despite its shortcomings. For example, using this approach for the adverse

[16] The house-price retrenchments that occurred over the periods 1980–1985, 1989–1996, 2006–2011 (as detailed in Table 2) are referred to in this document as housing recessions. The date-ranges of housing recessions are based on the timing of house-price retrenchments. These dates were also associated with sustained declines in real residential investment, although, the precise timings of housing recessions would likely be slightly different were they to be classified based on real residential investment in addition to house prices. The ratios described in Table 2 are calculated based on nominal HPI and HPI-DPI ratios indexed to 100 in 2000:Q1.

[17] The means of effecting an adjustment to the severely adverse scenario to address salient systemic risks differs from the means used to adjust the unemployment rate. For example, in adjusting the scenario for an increased unemployment rate, the Board would modify all variables such that the future paths of the variables are similar to how these variables have moved historically. In contrast, to address salient risks, the Board may only modify a small number of variables in the scenario and, as such, their future paths in the scenario would be somewhat more atypical, albeit not implausible, given existing risks.

[18] For example, in the context of CCAR, the Board currently uses the adverse scenario as one consideration in evaluating a firm's capital adequacy.

[19] 12 CFR 252.55.

scenario could allow the Board to explore an alternative approach to develop stress testing scenarios and their effect on a company's net income and capital.

(g) Finally, the Board could design the adverse scenario based on a menu of historical experiences—such as, a moderate recession (*e.g.,* the 1990–1991 recession); a stagflation event (*e.g.,* stagflation during 1974); an emerging markets crisis (*e.g.,* the Asian currency crisis of 1997–1998); an oil price shock (*e.g.,* the shock during the run up to the 1990–1991 recession); or high inflation shock (*e.g.,* the inflation pressures of 1977–1979). The Board believes these are important stresses that should be understood; however, there may be notable benefits from formulating the adverse scenario following other approaches—specifically, those described previously in this section—and consequently the Board does not believe that the adverse scenario should be limited to historical episodes only.

(h) With the exception of cases in which the probabilistic approach is used to generate the adverse scenario, the adverse scenario will at a minimum contain a mild to moderate recession. This is because most of the value from investigating the implications of the risks described above is likely to be obtained from considering them in the context of balance sheets of companies that are under some stress.

5. Approach for Formulating the Market Shock Component

(a) This section discusses the approach the Board proposes to adopt for developing the market shock component of the adverse and severely adverse scenarios appropriate for companies with significant trading activities. The design and specification of the market shock component differs from that of the macroeconomic scenarios because profits and losses from trading are measured in mark-to-market terms, while revenues and losses from traditional banking are generally measured using the accrual method. As noted above, another critical difference is the time-evolution of the market shock component. The market shock component consists of an instantaneous ''shock'' to a large number of risk factors that determine the mark-to-market value of trading positions, while the macroeconomic scenarios supply a projected path of economic variables that affect traditional banking activities over the entire planning period.

(b) The development of the market shock component that are detailed in this section are as follows: Baseline (subsection 5.1), severely adverse (subsection 5.2), and adverse (subsection 5.3).

5.1 Approach for Formulating the Market Shock Component Under the Baseline Scenario

By definition, market shocks are large, previously unanticipated moves in asset prices and rates. Because asset prices should, broadly speaking, reflect consensus opinions about the future evolution of the economy, large price movements, as envisioned in the market shock, should not occur along the baseline path. As a result, the market shock will not be included in the baseline scenario.

5.2 Approach for Formulating the Market Shock Component Under the Severely Adverse Scenario

This section addresses possible approaches to designing the market shock component in the severely adverse scenario, including important considerations for scenario design, possible approaches to designing scenarios, and a development strategy for implementing the preferred approach.

5.2.1 Design Considerations for Market Shocks

(a) The general market practice for stressing a trading portfolio is to specify market shocks either in terms of extreme moves in observable, broad market indicators and risk factors or directly as large changes to the mark-to-market values of financial instruments. These moves can be specified either in relative terms or absolute terms. Supplying values of risk factors after a ''shock'' is roughly equivalent to the macroeconomic scenarios, which supply values for a set of economic and financial variables; however, trading stress testing differs from macroeconomic stress testing in several critical ways.

(b) In the past, the Board used one of two approaches to specify market shocks. During SCAP and CCAR in 2011, the Board used a very general approach to market shocks and required companies to stress their trading positions using changes in market prices and rates experienced during the second half of 2008, without specifying risk factor shocks. This broad guidance resulted in inconsistency across companies both in terms of the severity and the application of shocks. In certain areas, companies were permitted to use their own experience during the second half of 2008 to define shocks. This resulted in significant variation in shock severity across companies.

(c) To enhance the consistency and comparability in market shocks for the stress tests in 2012 and 2013, the Board provided to each trading company more than 35,000 specific risk factor shocks, primarily based on market moves in the second half of 2008. While the number of risk factors used in companies' pricing and stress-testing models still typically exceed that provided in the Board's scenarios, the greater specificity resulted in more consistency in the scenario across companies. The benefit of the comprehensiveness of risk factor shocks is at least partly offset by the potential difficulty in creating shocks that are coherent and internally consistent, particularly as the framework for developing market shocks deviates from historical events.

(d) Also importantly, the ultimate losses associated with a given market shock will depend on a company's trading positions, which can make it difficult to rank order, *ex ante,* the severity of the scenarios. In certain instances, market shocks that include large market moves may not be particularly stressful for a given company. Aligning the market shock with the macroeconomic scenario for consistency may result in certain companies actually benefiting from risk factor moves of larger magnitude in the market scenario if the companies are hedging against salient risks to other parts of their business. Thus, the severity of market shocks must be calibrated to take into account how a complex set of risks, such as directional risks and basis risks, interacts with each other, given the companies' trading positions at the time of stress. For instance, a large depreciation in a foreign currency would benefit companies with net short positions in the currency while hurting those with net long positions. In addition, longer maturity positions may move differently from shorter maturity positions, adding further complexity.

(e) The instantaneous nature of market shocks and the immediate recognition of mark-to-market losses add another element to the design of market shocks, and to determining the appropriate severity of shocks. For instance, in previous stress tests, the Board assumed that market moves that occurred over the six-month period in late 2008 would occur instantaneously. The design of the market shocks must factor in appropriate assumptions around the period of time during which market events will unfold and any associated market responses.

5.2.2 Approaches to Market Shock Design

(a) As an additional component of the adverse and severely adverse scenarios, the Board plans to use a standardized set of market shocks that apply to all companies with significant trading activity. The market shocks could be based on a single historical episode, multiple historical periods, hypothetical (but plausible) events, or some combination of historical episodes and hypothetical events (hybrid approach). Depending on the type of hypothetical events, a scenario based on such events may result in changes in risk factors that were not previously observed. In the supervisory scenarios for 2012 and 2013, the shocks were largely based on relative moves in asset prices and rates during the second half of 2008, but also included some additional considerations to factor in the widening of spreads for European sovereigns and financial companies based on actual observation during the latter part of 2011.

(b) For the market shock component in the severely adverse scenario, the Board plans to use the hybrid approach to develop shocks. The hybrid approach allows the Board to maintain certain core elements of consistency in market shocks each year while providing flexibility to add hypothetical elements based on market conditions at the time of the stress tests. In addition, this approach will help ensure internal consistency in the scenario because of its basis in historical episodes; however, combining the historical episode and hypothetical events may require small adjustments to ensure mutual consistency of the joint moves. In general, the hybrid approach provides considerable flexibility in developing scenarios that are relevant each year, and by introducing variations in the scenario, the approach will also reduce the ability of companies with significant trading activity to modify or shift their portfolios to minimize expected losses in the severely adverse market shock.

(c) The Board has considered a number of alternative approaches for the design of market shocks. For example, the Board explored an option of providing tailored

market shocks for each trading company, using information on the companies' portfolio gathered through ongoing supervision, or other means. By specifically targeting known or potential vulnerabilities in a company's trading position, the tailored approach would be useful in assessing each company's capital adequacy as it relates to the company's idiosyncratic risk. However, the Board does not believe this approach to be well-suited for the stress tests required by regulation. Consistency and comparability are key features of annual supervisory stress tests and annual company-run stress tests required in the stress test rules. It would be difficult to use the information on the companies' portfolios to design a common set of shocks that are universally stressful for all covered companies. As a result, this approach would be better suited to more customized, tailored stress tests that are part of the company's internal capital planning process or to other supervisory efforts outside of the stress tests conducted under the capital rule and the stress test rules.

5.2.3 Development of the Market Shock

(a) Consistent with the approach described above, the market shock component for the severely adverse scenario will incorporate key elements of market developments during the second half of 2008, but will also incorporate observations from other periods or price and rate movements in certain markets that the Board deems to be plausible, though such movements may not have been observed historically. Over time, the Board also expects to rely less on market events of the second half of 2008 and more on hypothetical events or other historical episodes to develop the market shock.

(b) The developments in the credit markets during the second half of 2008 were unprecedented, providing a reasonable basis for market shocks in the severely adverse scenario. During this period, key risk factors in virtually all asset classes experienced extremely large shocks; the collective breadth and intensity of the moves have no parallels in modern financial history and, on that basis, it seems likely that this episode will continue to be the most relevant historical scenario, although experience during other historical episodes may also guide the severity of the market shock component of the severely adverse scenario. Moreover, the risk factor moves during this episode are directly consistent with the ''recession'' approach that underlies the macroeconomic assumptions. However, market shocks based only on historical events could become stale and less relevant over time as the company's positions change, particularly if more salient features are not added each year.

(c) While the market shocks based on the second half of 2008 are of unparalleled magnitude, the shocks may become less relevant over time as the companies' trading positions change. In addition, more recent events could highlight the companies' vulnerability to certain market events. For example, in 2011, Eurozone credit spreads in the sovereign and financial sectors surpassed those observed during the second half of 2008, necessitating the modification of the severely adverse market shock in 2012 and 2013 to reflect a salient source of stress to trading positions. As a result, it is important to incorporate both historical and hypothetical outcomes into market shocks for the severely adverse scenario. For the time being, the development of market shocks in the severely adverse scenario will begin with the risk factor movements in a particular historical period, such as the second half of 2008. The Board will then consider hypothetical but plausible outcomes, based on financial stability reports, supervisory information, and internal and external assessments of market risks and potential flash points. The hypothetical outcomes could originate from major geopolitical, economic, or financial market events with potentially significant impacts on market risk factors. The severity of these hypothetical moves will likely be guided by similar historical events, assumptions embedded in the companies' internal stress tests or market participants, and other available information.

(d) Once broad market scenarios are agreed upon, specific risk factor groups will be targeted as the source of the trading stress. For example, a scenario involving the failure of a large, interconnected globally active financial institution could begin with a sharp increase in credit default swap spreads and a precipitous decline in asset prices across multiple markets, as investors become more risk averse and market liquidity evaporates. These broad market movements will be extrapolated to the granular level for all risk factors by examining transmission channels and the historical relationships between variables, though in some cases, the movement in particular risk factors may be amplified based on theoretical relationships, market observations, or the saliency to company trading books. If there is a disagreement between the risk factor movements in the historical event used in the scenario and the hypothetical event, the Board will reconcile the differences by assessing *a priori* expectations based on financial and economic theory and the importance of the risk factors to the trading positions of the covered companies.

5.3 Approach for Formulating the Market Shock Under the Adverse Scenario

(a) The market shock component included in the adverse scenario will feature risk factor movements that are generally less significant than the market shock component of the severely adverse scenario. However, the adverse market shock may also feature risk factor shocks that are substantively different from those included in the severely adverse scenario, in order to provide useful information to supervisors. As in the case of the macroeconomic scenario, the market shock component in the adverse scenario can be developed in a number of different ways.

(b) The adverse scenario could be differentiated from the severely adverse scenario by the absolute size of the shock, the scenario design process (*e.g.,* historical events versus hypothetical events), or some other criteria. The Board expects that as the market shock component of the adverse scenario may differ qualitatively from the market shock component of the severely adverse scenario, the results of adverse scenarios may be useful in identifying a particularly vulnerable area in a trading company's positions.

(c) There are several possibilities for the adverse scenario and the Board may use a different approach each year to better explore the vulnerabilities of companies with significant trading activity. One approach is to use a scenario based on some combination of historical events. This approach is similar to the one used for the market shock in 2012, where the market shock component was largely based on the second half of 2008, but also included a number of risk factor shocks that reflected the significant widening of spreads for European sovereigns and financials in late 2011. This approach will provide some consistency each year and provide an internally consistent scenario with minimal implementation burden. Having a relatively consistent adverse scenario may be useful as it potentially serves as a benchmark against the results of the severely adverse scenario and can be compared to past stress tests.

(d) Another approach is to have an adverse scenario that is identical to the severely adverse scenario, except that the shocks are smaller in magnitude (*e.g.,* 100 basis points for adverse versus 200 basis points for severely adverse). This ''scaling approach'' generally fits well with an intuitive interpretation of ''adverse'' and ''severely adverse.'' Moreover, since the nature of the moves will be identical between the two classes of scenarios, there will be at least directional consistency in the risk factor inputs between scenarios. While under this approach the adverse scenario will be superficially identical to the severely adverse, the logic underlying the severely adverse scenario may not be applicable. For example, if the severely adverse scenario was based on a historical scenario, the same could not be said of the adverse scenario. It is also possible, although unlikely, that a scaled adverse scenario actually will result in greater losses, for some companies, than a severely adverse scenario with similar moves of greater magnitude. For example, if some companies are hedging against tail outcomes, then the more extreme trading book dollar losses may not correspond to the most extreme market moves. The market shock component of the adverse scenario in 2013 was largely based on the scaling approach in which a majority of risk factor shocks were smaller in magnitude than the severely adverse scenario, but it also featured long-term interest rate shocks that were not part of the severely adverse market shock.

(e) Alternatively, the market shock component of an adverse scenario could differ substantially from the severely adverse scenario with respect to the sizes and nature of the shocks. Under this approach, the market shock component could be constructed using some combination of historical and hypothetical events, similar to the severely adverse scenario. As a result, the market shock component of the adverse scenario could be viewed as an alternative to the severely adverse scenario and, therefore, it is possible that the adverse scenario could have larger losses for some companies than the severely adverse scenario.

(f) Finally, the design of the adverse scenario for annual stress tests could be

informed by the companies' own trading scenarios used for their BHC-designed scenarios in CCAR and in their mid-cycle company-run stress tests.[20]

6. Consistency Between the Macroeconomic Scenarios and the Market Shock

(a) As discussed earlier, the market shock comprises a set of movements in a very large number of risk factors that are realized instantaneously. Among the risk factors specified in the market shock are several variables also specified in the macroeconomic scenarios, such as short- and long-maturity interest rates on Treasury and corporate debt, the level and volatility of U.S. stock prices, and exchange rates.

(b) The market shock component is an add-on to the macroeconomic scenarios that is applied to a subset of companies, with no assumed effect on other aspects of the stress tests such as balances, revenues, or other losses. As a result, the market shock component may not be always directionally consistent with the macroeconomic scenario. Because the market shock is designed, in part, to mimic the effects of a sudden market dislocation, while the macroeconomic scenarios are designed to provide a description of the evolution of the real economy over two or more years, assumed economic conditions can move in significantly different ways. In effect, the market shock can simulate a market panic, during which financial asset prices move rapidly in unexpected directions, and the macroeconomic assumptions can simulate the severe recession that follows. Indeed, the pattern of a financial crisis, characterized by a short period of wild swings in asset prices followed by a prolonged period of moribund activity, and a subsequent severe recession is familiar and plausible.

(c) As discussed in section 4.2.4, the Board may feature a particularly salient risk in the macroeconomic assumptions for the severely adverse scenario, such as a fall in an elevated asset price. In such instances, the Board may also seek to reflect the same risk in one of the market shocks. For example, if the macroeconomic scenario were to feature a substantial decline in house prices, it may seem plausible for the market shock to also feature a significant decline in market values of any securities that are closely tied to the housing sector or residential mortgages.

(d) In addition, as discussed in section 4.3, the Board may specify the macroeconomic assumptions in the adverse scenario in such a way as to explore risks qualitatively different from those in the severely adverse scenario. Depending on the nature and type of such risks, the Board may also seek to reflect these risks in one of the market shocks as appropriate.

7. Timeline for Scenario Publication

(a) The Board will provide a description of the macroeconomic scenarios by no later than February 15. During the period immediately preceding the publication of the scenarios, the Board will collect and consider information from academics, professional forecasters, international organizations, domestic and foreign supervisors, and other private-sector analysts that regularly conduct stress tests based on U.S. and global economic and financial scenarios, including analysts at the covered companies. In addition, the Board will consult with the FDIC and the OCC on the salient risks to be considered in the scenarios. The Board expects to conduct this process in October and November of each year and to update the scenarios, based on incoming macroeconomic data releases and other information, through the end of January.

(b) The Board expects to provide a broad overview of the market shock component along with the macroeconomic scenarios. The Board will publish the market shock templates by no later than March 1 of each year, and intends to publish the market shock earlier in the stress test and capital plan cycles to allow companies more time to conduct their stress tests.

TABLE 1—CLASSIFICATION OF U.S. RECESSIONS

Peak	Trough	Severity	Duration (quarters)	Decline in real GDP	Change in the unemployment rate during the recession	Total change in the unemployment rate (incl. after the recession)
1957Q3	1958Q2	Severe	4 (Medium)	−3.6	3.2	3.2
1960Q2	1961Q1	Moderate	4 (Medium)	−1.0	1.6	1.8
1969Q4	1970Q4	Moderate	5 (Medium)	−0.2	2.2	2.4
1973Q4	1975Q1	Severe	6 (Long)	−3.1	3.4	4.1
1980Q1	1980Q3	Moderate	3 (Short)	−2.2	1.4	1.4
1981Q3	1982Q4	Severe	6 (Long)	−2.8	3.3	3.3
1990Q3	1991Q1	Mild	3 (Short)	−1.3	0.9	1.9
2001Q1	2001Q4	Mild	4 (Medium)	0.2	1.3	2.0
2007Q4	2009Q2	Severe	7 (Long)	−4.3	4.5	5.1
Average		Severe	6	−3.5	3.7	3.9
Average		Moderate	4	−1.1	1.8	1.8
Average		Mild	3	−0.6	1.1	1.9

Source: Bureau of Economic Analysis, National Income and Product Accounts, Comprehensive Revision on July 31, 2013.

TABLE 2—HOUSE PRICES IN HOUSING RECESSIONS

Peak	Trough	Severity	Duration (quarters)	%–change in NHPI	%–change in HPI–DPI	HPI–DPI trough level (2000:Q1 = 100)
1980Q2	1985Q2	Moderate	20 (long)	26.6	−15.9	102.1
1989Q4	1997Q1	Moderate	29 (long)	10.5	−17.0	94.9
2005Q4	2012Q1	Severe	25 (long)	−29.6	−41.3	86.9
Average			24.7	2.5	−24.7	94.6

Source: CoreLogic, BEA.

Note: The date-ranges of housing recessions listed in Table 2 are based on the timing of house-price retrenchments.

[20] 12 CFR 252.55.

By order of the Board of Governors of the Federal Reserve System February 22, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–03504 Filed 2–27–19; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket No. R–1649]

RIN 7100–AF 38

Stress Testing Policy Statement

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final policy statement on the approach to supervisory stress testing conducted under the Board's stress testing rules and the Board's capital plan rule.

DATES: Effective April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Associate Director, (202) 263–4833, Kathleen Johnson, Assistant Director, (202) 452–3644, Robert Sarama, Assistant Director, (202) 973–7436, Joseph Cox, Senior Supervisory Financial Analyst, (202) 452–3216, Aurite Werman, Senior Financial Analyst, (202) 263–4802, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Senior Counsel, (202) 475–6682, or Asad Kudiya, Counsel, (202) 475–6358, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Description of Stress Testing Policy Statement
III. Summary of Comments Received and Revisions to the Stress Testing Policy Statement
A. Principles of Supervisory Stress Testing
1. Independence
2. Robustness and Stability
3. Conservatism
B. Supervisory Stress Test Model Policies
1. Disclosure of Information Related to the Supervisory Stress Test
2. Phasing in of Highly Material Model Changes
3. Limiting Reliance on Past Outcomes
4. Credit Supply Maintenance
C. Principles and Policies of Supervisory Stress Test Model Validation
IV. Administrative Law Matters
A. Use of Plain Language
B. Paperwork Reduction Act Analysis
C. Regulatory Flexibility Act Analysis

I. Background

Supervisory stress testing is a tool that allows the Board to assess whether the largest and most complex financial firms are sufficiently capitalized to absorb losses in stressful economic conditions while continuing to meet obligations to creditors and other counterparties and to lend to households and businesses.

The Board's approach to supervisory stress testing has evolved since the Supervisory Capital Assessment Program (SCAP) in 2009, which was the first evaluation of capital levels of bank holding companies (BHCs) on a forward-looking basis under stress. The lessons from SCAP encouraged the creation, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] of the Dodd-Frank Act Stress Test (DFAST), a forward-looking, quantitative evaluation of the impact of stressful economic and financial market conditions on firms' capital. Supervisory stress test models are used to produce estimates of post-stress capital ratios for covered companies,[2] pursuant to the Dodd-Frank Act and the Board's stress test rules.[3]

The supervisory models are also used in the Comprehensive Capital Analysis and Review (CCAR), a related supervisory program, pursuant to the Board's capital plan rule.[4] CCAR focuses on forward-looking capital planning and the use of stress testing to assess firms' capital adequacy.[5] By assessing the capital adequacy of a firm under severe projected economic and financial stress, the supervisory stress test complements minimum regulatory capital ratios, which reflect the firm's current condition.

II. Description of Stress Testing Policy Statement

On December 15, 2017, the Board invited comment on a proposal to adopt a stress testing policy statement (Policy Statement).[6] The proposed Policy Statement would have described the Board's approach to the development, implementation, use, and validation of the Federal Reserve's supervisory stress test models, and would have complemented the Board's policy statement on scenario design.[7] The proposal would have included seven principles that have guided decisions regarding supervisory stress test modeling in the past and that would continue to guide the development of the modeling framework. In addition, the proposed Policy Statement would have established procedures and policies designed to adhere to at least one of the foundational principles of supervisory stress testing. These policies and procedures would have included modeling-specific policies and associated assumptions, such as the policy of credit supply maintenance. Finally, the proposed Policy Statement would have addressed principles and policies of supervisory model validation, which is integral to the credibility of the supervisory stress test. By establishing these principles, policies, and procedures, the proposed Policy Statement would have increased transparency around the Federal Reserve's approach to supervisory modeling.

III. Summary of Comments Received and Revisions to the Stress Testing Policy Statement

The Board received twelve comments in response to the proposal. Commenters included public interest groups, academics, individual banking organizations, and trade and industry groups. Commenters generally supported the elements of the proposed Policy Statement, and provided alternative views on certain principles and policies described.

A. Principles of Supervisory Stress Testing

1. Independence

The proposed Policy Statement would have emphasized the use of independent supervisory models for assessing covered companies' capital adequacy. Supervisory models developed internally and independently

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[1] 77 FR 62377 (October 12, 2012) (Stress Test rules). *See* 12 CFR part 252, subparts E and F.

[2] Covered companies are BHCs with average total consolidated assets of $50 billion or more, U.S. intermediate holding companies of foreign banking organizations, and any nonbank financial company supervised by the Board. On July 6, 2018, the Board issued a public statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) (Pub. L. 115–174, 132 Stat. 1296 (2018)). The Board stated, consistent with the EGRRCPA, that it will not take action to require BHCs with total consolidated assets greater than or equal to $50 billion but less than $100 billion to comply with the Board's capital plan rule (12 CFR 225.8) or the Board's supervisory stress test and company-run stress test rules (12 CFR 252, subparts E and F). *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

[3] Public Law 111–203, 124 Stat. 1376 (2010); 12 CFR part 252, subpart E.

[4] 12 CFR 225.8.

[5] *Id.* CCAR also includes a qualitative assessment of capital planning practices at the largest and most complex firms, which is not the subject of this proposed Policy Statement.

[6] 82 FR 59528 (December 15, 2017).

[7] *See* 12 CFR 252, Appendix A.

rely on detailed portfolio data provided by covered companies, but do not rely on models or estimates provided by covered companies to the greatest extent possible.

Commenters were divided in their views on the use of independent supervisory models. Several commenters expressed the view that the stress testing program should be tailored to each covered company, and recommended that the Federal Reserve consider increasing its reliance on firms' own models. A commenter expressed the view that the Board is not required to use DFAST stress testing results in the CCAR quantitative assessment in order to treat firms consistently, and recommended that the Federal Reserve use its own models for the DFAST assessment and covered companies' models for the CCAR quantitative assessment.

Other commenters strongly supported the principle of independence, and recommended that the Board maintain independently developed models separate from covered companies' models for use in the supervisory stress test. One commenter expressed the view that the Federal Reserve has an effective framework for carrying out stress tests of the largest firms, and another asserted that the failure of firms' internal models during the financial crisis showed the need for better model risk governance and a strong independent check on firm models.

The Board will maintain independence as a central principle of supervisory stress testing. Supervisory models provide an independent check on firm risk management, and the use of consistent supervisory models in both the DFAST assessment and CCAR quantitative assessments is critical to ensuring that resulting capital requirements are based on a comparable assessment. Studies have found that covered companies' own models often produce materially different estimates of expected losses for the same set of portfolios.[8] As a result, relying on those models could result in material differences in the assessment of post-stress capital ratios across firms with similar risk profiles.

Independent models that are not specifically tailored to each individual institution are still appropriate for assessing risk, as such models do capture differences in risk when estimated on sufficiently granular data. Many of the supervisory models are estimated on a pooled set of loan- or securities-level data, and as a result, can capture differences in portfolio risk characteristics across firms in a consistent manner. Board staff regularly meets with covered companies and industry representatives to solicit input on how best to collect data, and the Board has in the past modified its information collection requirements based on feedback received.

2. Robustness and Stability

Robustness and stability were described as key principles of supervisory stress testing in the proposed Policy Statement. Specifically, supervisory models should be robust and stable, such that changes in model projections over time are not driven by transitory factors.

The estimates of post-stress capital produced by the supervisory stress test provide information regarding covered companies' capital adequacy to market participants, firms, and the general public. Adherence to the principle of robustness and stability helps to ensure that changes in these model projections over time are not driven by temporary variations in model performance or inputs.

A commenter expressed concern about the inclusion of this principle, asserting that elevating stability to a central principle is likely to reinforce a tendency toward an excessively static stress test, and that incorporating new data in supervisory stress testing models could be important in capturing new risks.

In response to the comment, the Board is maintaining an emphasis on robustness and stability as key principles of stress testing. This emphasis is intended not to limit the dynamism of the stress test as a supervisory tool, but rather to ensure that any changes in model projections reflect underlying risk factors, scenarios, and model enhancements. Supervisory models will continue to be recalibrated with newly available input data each year, and these data will affect supervisory model projections, particularly when the data reflect evolving risks. Generally, however, model recalibrations due to newly available data should not be the principal driver of year-over-year changes in results.

3. Conservatism

The proposed Policy Statement would have established conservatism as a central principle of supervisory stress testing. Commenters generally supported the principle, asserting that the massive economic costs of a financial collapse argue for a commitment to erring on the conservative side. Accordingly, the final Policy Statement will reflect the Board's commitment, given a reasonable set of assumptions or approaches, to use those results that result in relatively more significant losses or lower revenue, all other things being equal.

4. Other Principles of Supervisory Stress Testing

The Board sought comment on several other principles of supervisory stress testing described in the proposed Policy Statement. The proposed Policy Statement would have described a system of models designed to result in projections that are not only independent, robust and stable, and conservative, but also forward-looking, consistent and comparable across covered companies, generated from simpler and more transparent approaches, and able to capture the impact of economic stress. The Board did not receive comments specific to those proposed principles.

One commenter recommended that the Board incorporate counter-cyclicality as a stated principle of stress testing, noting that projected capital losses in the stress tests have improved in recent years even as economic conditions have improved and scenario severity has increased. Improvements in projected post-stress capital in recent stress test cycles do not solely reflect the Board's principles of supervisory stress test modeling and scenario design. Rather, a number of factors drive projected capital losses in the supervisory stress test. Year-over-year changes in the supervisory stress test results reflect not only the scenarios and supervisory models, but also portfolio composition and risk characteristics and the starting capital positions of firms, which tend to be procyclical. The Board already strives to limit procyclicality in the supervisory stress test through scenario design, and describes that goal in its policy statement on scenario design. Accordingly, the final Policy Statement will reflect the principles of supervisory stress testing as proposed.

B. Supervisory Stress Test Model Policies

The proposed Policy Statement would have established policies and procedures to guide the development, implementation, and use of all models used in supervisory stress test projections. These policies would have

[8] *See* Financial Services Authority, 2012, ''Results of 2011 Hypothetical Portfolio Exercise for Sovereigns, Banks and Large Corporates,'' January 25, available at *http://www.fsa.gov.uk/static/pubs/international/2011hpe.pdf;* and Simon Firestone and Marcelo Rezende, ''Are Banks' Internal Risk Parameters Consistent? Evidence From Syndicated Loans,'' *Journal of Financial Services Research,* vol. 50, issue 2 (October 2016) pp. 211–242.

facilitated adherence to at least one of the governing principles described in the Supervisory Stress Test Model Policies section.

1. Disclosure of Information Related to the Supervisory Stress Test

The proposed Policy Statement included a policy of information parity, such that the Board does not disclose information related to the supervisory stress test or firm-specific results to covered companies if that information is not also publicly disclosed. The proposed Policy Statement noted that increasing public disclosure can help the public understand and interpret the results of the supervisory stress test by facilitating evaluation of the quality of the Board's assessment, while promoting equitable treatment of covered companies.

Commenters were divided on the Board's proposed policy. A commenter recommended that the Board engage in a confidential supervisory dialogue with individual covered companies in specific instances, such as when the results of the supervisory stress test deviate from the results of the firm's company-run stress test. This commenter also requested that the Board share information about data deficiencies with firms. Another commenter supported the Board's proposed approach to disclosure of information related to the supervisory stress test.

The final Policy Statement retains the proposed policy of not disclosing information to covered companies that the Board does not also share with the public. This approach ensures that no single institution has access to information about the supervisory stress test that is not also publicly accessible by other institutions. For example, under this approach, firms newly subject to the supervisory stress test would have the same information as firms that have been subject to the supervisory stress test since its inception.

The Board will maintain its current practice of notifying covered companies of deficient data identified by the Federal Reserve, and providing covered companies with the opportunity to remedy those deficient data. In addition, the Board plans to provide the public with more information about conservative assumptions applied to deficient data than it has in prior disclosures. The Board intends to provide in the annual disclosure of DFAST results the conservative loss rates that are applied to portfolios that cannot be modeled because of missing data.

2. Phasing in of Highly Material Model Changes

The proposed Policy Statement would have established the policy that the Board phase in the most material model changes over two years, in the interest of reducing model-driven volatility in stress testing results. Commenters were divided on the proposed policy. One commenter asserted that phasing in highly material model changes could delay incorporation of material new data into the modeling process. Another commenter requested that the Board phase in all material model changes over two years, as opposed to phasing in the most material model changes over two years.

In response to comments, the Board will continue to phase in the most material model changes over two years, so as not to introduce excess volatility to supervisory results. The Board has revised the final Policy Statement to include a description of the materiality threshold that generally determines the model changes subject to phase-in over two years. Specifically, in assessing the materiality of a model change, the Federal Reserve calculates the impact of using an enhanced model on post-stress capital ratios using data and scenarios from prior years' supervisory stress test exercises. Under the final Policy Statement, the use of an enhanced model is considered a highly material change if its use results in a change in the CET1 ratio of 50 basis points or more for one or more firms, relative to the model used in prior years' supervisory exercises. In general, the phase-in threshold for highly material model changes applies only to conceptual changes to models. Model changes related to changes in accounting or regulatory capital rules and model parameter re-estimation based on newly available data are implemented with immediate effect. The Board will continue to evaluate the appropriateness of the threshold for the model phase-in, including the cumulative effect of all model changes in a given year.

3. Limiting Reliance on Past Outcomes

The proposed Policy Statement would have established a policy of limiting reliance on past outcomes, and minimizing the use of firm-specific fixed effects in supervisory models, to allow for the incorporation of events that have not occurred historically in supervisory stress test modeling. A commenter requested that, where applicable, the Board provide detail on, and examples of, firm-specific fixed effects. The Board is finalizing the policy as described in the proposed Policy Statement. In finalizing the notice of enhanced model disclosure,[9] the Board intends to expand its description of supervisory models that use firm-specific fixed effects in its enhanced model disclosure.

4. Credit Supply Maintenance

The Board invited comment on its policy of credit supply maintenance, described in Section 2.7 of the proposed Policy Statement, as the assumption that firms' balance sheets would remain consistent or would increase in magnitude. Commenters generally supported the proposed policy. A commenter asserted that it is not sufficient to assume that firms maintain their asset size throughout the projection horizon, and that it is conservative and safer to assume some increase in firms' asset size. Another commenter expressed the view that the assumption of a flat or growing balance sheet is pivotal, as it reflects the role of banks in providing additional credit in a troubled economy.

Several commenters encouraged the Board to assume that firms' balance sheets and risk-weighted assets (RWAs) stay constant, rather than grow, over the projection horizon.[10] Other commenters asserted that the flat-to-rising balance sheet assumption is not consistent with historical patterns, and requested that the Federal Reserve make the more realistic assumption that firms' balance sheets and RWAs grow smaller in a stressed environment, in order to reflect likely bank behavior.

The Board is finalizing the credit supply maintenance assumption as described in the proposed Policy Statement. The assumption that aggregate credit supply does not contract during the stress period is key to the aim of supervisory stress testing, which is to assess whether firms are sufficiently capitalized to both absorb

[9] 82 FR 59547 (December 15, 2017).

[10] On April 25, 2018, the Board issued a notice of proposed rulemaking, which would revise the Board's stress test rules and capital plan rule to use the results of the supervisory stress test to size a firm's stress capital buffer and stress leverage buffer. As part of the proposal, the Board proposed to revise section 2.7 of the Policy Statement relating to credit supply maintenance to provide that, in projecting a firm's balance sheet, the Federal Reserve will assume that the firm takes actions to maintain a constant level of assets, including loans, trading assets, and securities over the planning horizon. The proposal would also add a new section 3.4 to the Policy Statement regarding a simple approach for projecting risk-weighted assets (RWAs). In projecting RWAs under this proposed section, the Federal Reserve would generally assume that a covered company's RWAs remain unchanged over the planning horizon. Those changes are still being proposed and are not being finalized as part of this notice.

losses during times of economic stress and continue to lend to households and businesses and meet their obligations.

5. Other Supervisory Stress Test Model Policies

The Board sought comment on several other supervisory stress test model policies described in the proposed Policy Statement. The proposed Policy Statement described policies and procedures related to soundness in model design, the treatment of the global market shock, incorporation of business plan changes, firm-specific overlays, treatment of missing or deficient data, and treatment of immaterial portfolios. The Board did not receive additional comments specific to those proposed policies and procedures.

C. Principles and Policies of Supervisory Model Validation

Models used in the supervisory stress test are subject to ongoing review and validation by an independent unit within the Federal Reserve. The proposed Policy Statement described principles of model validation, central to the credibility of supervisory models and of the stress test exercise. The Board did not receive comments on its principles of supervisory model validation and is adopting the principles without change.

IV. Administrative Law Matters

A. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board received no comments on these matters and believes the final policy statement is written plainly and clearly.

B. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final policy statement.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis (IRFA).[11] The Board solicited public comment on this policy statement in a notice of proposed rulemaking[12] and has since considered the potential impact of this policy statement on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The FRFA must contain: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant alternatives to the rule considered by the agency.

The final policy statement outlines the key principles and policies governing the Board's approach to models used in supervisory stress testing. The final policy statement is intended to increase transparency around the development, implementation, and validation of these models. Commenters did not raise any issues in response to the IRFA. In addition, the Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed policy statement.

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organizations).[13] As discussed in the **SUPPLEMENTARY INFORMATION**, the final policy statement generally would apply to bank holding companies with total consolidated assets of $100 billion or more and U.S. intermediate holding companies of foreign banking, which generally have at least total consolidated assets of $50 billion or more. Companies that are subject to the final policy statement therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the final policy statement does not apply to any company with assets of $550 million or less, the final policy statement does not apply to any ''small entity'' for purposes of the RFA.

There are no projected reporting, recordkeeping, or other compliance requirements associated with the final policy statement. As discussed above, the final policy statement does not apply to small entities.

The Board does not believe that the final policy statement duplicates, overlaps, or conflicts with any other Federal Rules. In addition, the Board does not believe there are significant alternatives to the final policy statement that have less economic impact on small entities. In light of the foregoing, the Board does not believe the final policy statement will have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Nonbank Financial Companies Supervised by the Board, Reporting and recordkeeping requirements, Securities, Stress Testing.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

[11] *See* 5 U.S.C. 603, 604 and 605.

[12] 82 FR 59533 (December 15, 2017).

[13] *See* 13 CFR 121.201.

■ 2. Appendix B to part 252 is added to read as follows:

Appendix B—Stress Testing Policy Statement

This Policy Statement describes the principles, policies, and procedures that guide the development, implementation, and validation of models used in the Federal Reserve's supervisory stress test.

1. Principles of Supervisory Stress Testing

The system of models used in the supervisory stress test is designed to result in projections that are (i) from an independent supervisory perspective; (ii) forward-looking; (iii) consistent and comparable across covered companies; (iv) generated from simpler and more transparent approaches, where appropriate; (v) robust and stable; (vi) conservative; and (vii) able to capture the impact of economic stress. These principles are further explained below.

1.1. Independence

(a) In the supervisory stress test, the Federal Reserve uses supervisory models that are developed internally and independently (*i.e.,* separate from models used by covered companies). The supervisory models rely on detailed portfolio data provided by covered companies but do not rely on models or estimates provided by covered companies to the greatest extent possible.

(b) The Federal Reserve's stress testing framework is unique among regulators in its use of independent estimates of losses and revenues under stress. These estimates provide a perspective that is not formed in consultation with covered companies or influenced by firm-provided estimates and that is useful to the public in its evaluation of covered companies' capital adequacy. This perspective is also valuable to covered companies, who may benefit from external assessments of their own losses and revenues under stress, and from the degree of credibility that independence confers upon supervisory stress test results.

(c) The independence of the supervisory stress test allows stress test projections to adhere to the other key principles described in the Policy Statement. The use of independent models allows for consistent treatment across firms. Losses and revenues under stress are estimated using the same modeling assumptions for all covered companies, enabling comparisons across supervisory stress test results. Differences in covered companies' results reflect differences in firm-specific risks and input data instead of differences in modeling assumptions. The use of independent models also ensures that stress test results are produced by stress-focused models, designed to project the performance of covered companies in adverse economic conditions.

(d) In instances in which it is not possible or appropriate to create a supervisory model for use in the stress test, including when supervisory data are insufficient to support a modeled estimate of losses or revenues, the Federal Reserve may use firm-provided estimates or third-party models or data. For example, in order to project trading and counterparty losses, sensitivities to risk factors and other information generated by covered companies' internal models are used. In the cases where firm-provided or third-party model estimates are used, the Federal Reserve monitors the quality and performance of the estimates through targeted examination, additional data collection, or benchmarking. The Board releases a list of the providers of third-party models or data used in the stress test exercise in the annual disclosure of quantitative results.

1.2. Forward-Looking

(a) The Federal Reserve has designed the supervisory stress test to be forward-looking. Supervisory models are tools for producing projections of potential losses and revenue effects based on each covered company's portfolio and circumstances.

(b) While supervisory models are specified using historical data, they should generally avoid relying solely on extrapolation of past trends in order to make projections, and instead should be able to incorporate events or outcomes that have not occurred. As described in Section 2.4, the Federal Reserve implements several supervisory modeling policies to limit reliance on past outcomes in its projections of losses and revenues. The incorporation of the macroeconomic scenario and global market shock component also introduces elements outside of the realm of historical experience into the supervisory stress test.

1.3. Consistency and Comparability

The Federal Reserve uses the same set of models and assumptions to produce loss projections for all covered companies participating in the supervisory stress test. A standard set of scenarios, assumptions, and models promotes equitable treatment of firms participating in the supervisory stress test and comparability of results, supporting cross-firm analysis and providing valuable information to supervisors and to the public. Adhering to a consistent modeling approach across covered companies means that differences in projected results are due to differences in input data, such as instrument type or portfolio risk characteristics, rather than differences in firm-specific assumptions made by the Federal Reserve.

1.4. Simplicity

The Federal Reserve uses simple approaches in supervisory modeling, where possible. Given a range of modeling approaches that are equally conceptually sound, the Federal Reserve will select the least complex modeling approach. In assessing simplicity, the Federal Reserve favors those modeling approaches that allow for a more straightforward interpretation of the drivers of model results and that minimize operational challenges for model implementation.

1.5. Robustness and Stability

The Federal Reserve maintains supervisory models that aim to be robust and stable, such that changes in model projections over time reflect underlying risk factors, scenarios, and model enhancements, rather than transitory factors. The estimates of post-stress capital produced by the supervisory stress test provide information regarding a covered company's capital adequacy to market participants, covered companies, and the public. Adherence to this principle helps to ensure that changes in these model projections over time are not driven by temporary variations in model performance or inputs. Supervisory models are recalibrated with newly available input data each year. These data affect supervisory model projections, particularly in times of evolving risks. However, these changes generally should not be the principal driver of a change in results, year over year.

1.6. Conservatism

Given a reasonable set of assumptions or approaches, all else equal, the Federal Reserve will opt to use those that result in larger losses or lower revenue. For example, given a lack of information about the true risk of a portfolio, the Federal Reserve will compensate for the lack of data by using a high percentile loss rate.

1.7. Focus on the Ability To Evaluate the Impact of Severe Economic Stress

In evaluating whether supervisory models are appropriate for use in a stress testing exercise, the Federal Reserve places particular emphasis on supervisory models' abilities to project outcomes in stressed economic environments. In the supervisory stress test, the Federal Reserve also seeks to capture risks to capital that arise specifically in times of economic stress, and that would not be prevalent in more typical economic environments. For example, the Federal Reserve includes losses stemming from the default of a covered company's largest counterparty in its projections of post-stress capital for firms with substantial trading or processing and custodian operations. The default of a company's largest counterparty is more likely to occur in times of severe economic stress than in normal economic conditions.

2. Supervisory Stress Test Model Policies

To be consistent with the seven principles outlined in Section 1, the Federal Reserve has established policies and procedures to guide the development, implementation, and use of all models used in supervisory stress test projections, described in more detail below. Each policy facilitates adherence to at least one of the modeling principles that govern the supervisory stress test, and in most cases facilitates adherence to several modeling principles.

2.1. Soundness in Model Design

(a) During development, the Federal Reserve (i) subjects supervisory models to extensive review of model theory and logic and general conceptual soundness; (ii) examines and evaluates justifications for modeling assumptions; and (iii) tests models to establish the accuracy and stability of the estimates and forecasts that they produce.

(b) After development, the Federal Reserve continues to subject supervisory models to scrutiny during implementation to ensure that the models remain appropriate for use in the stress test exercise. The Federal Reserve monitors changes in the economic environment, the structure of covered

companies and their portfolios, and the structure of the stress testing exercise, if applicable, to verify that a model in use continues to serve the purposes for which it was designed. Generally, the same principles, rigor, and standards for evaluating the suitability of supervisory models that apply in model development and design will apply in ongoing monitoring of supervisory models.

2.2. Disclosure of Information Related to the Supervisory Stress Test

(a) In general, the Board does not disclose information related to the supervisory stress test or firm-specific results to covered companies if that information is not also publicly disclosed.

(b) The Board has increased the breadth of its public disclosure since the inception of the supervisory stress test to include more information about model changes and key risk drivers, in addition to more detail on different components of projected net revenues and losses. Increasing public disclosure can help the public understand and interpret the results of the supervisory stress test, particularly with respect to the condition and capital adequacy of participating firms. Providing additional information about the supervisory stress test allows the public to make an evaluation of the quality of the Board's assessment. This policy also promotes consistent and equitable treatment of covered companies by ensuring that institutions do not have access to information about the supervisory stress test that is not also accessible publicly, corresponding to the principle of consistency and comparability.

2.3. Phasing in of Highly Material Model Changes

(a) The Federal Reserve may revise its supervisory stress test models to include advances in modeling techniques, enhancements in response to model validation findings, incorporation of richer and more detailed data, public comment, and identification of models with improved performance, particularly under adverse economic conditions. Revisions to supervisory stress models may at times have material impact on modeled outcomes.

(b) In order to mitigate sudden and unexpected changes to the supervisory stress test results, the Federal Reserve follows a general policy of phasing highly material model changes into the supervisory stress test over two years. The Federal Reserve assesses whether a model change would have a highly significant impact on the projections of losses, components of revenue, or post-stress capital ratios for covered companies. In these instances, in the first year when the model change is first implemented, estimates produced by the enhanced model are averaged with estimates produced by the model used in the previous stress test exercise. In the second and subsequent years, the supervisory stress test exercise will reflect only estimates produced by the enhanced model. This policy contributes to the stability of the results of the supervisory stress test. By implementing highly material model changes over the course of two stress test cycles, the Federal Reserve seeks to ensure that changes in model projections primarily reflect changes in underlying risk factors and scenarios, year over year.

(c) In general, phase-in thresholds for highly material model changes apply only to conceptual changes to models. Model changes related to changes in accounting or regulatory capital rules and model parameter re-estimation based on newly available data are implemented with immediate effect.

(d) In assessing the materiality of a model change, the Federal Reserve calculates the impact of using an enhanced model on post-stress capital ratios using data and scenarios from prior years' supervisory stress test exercises. The use of an enhanced model is considered a highly material change if its use results in a change in the CET1 ratio of 50 basis points or more for one or more firms, relative to the model used in prior years' supervisory exercises.

2.4. Limiting Reliance on Past Outcomes

(a) Models should not place undue emphasis on historical outcomes in predicting future outcomes. The Federal Reserve aims to produce supervisory stress test results that reflect likely outcomes under the supervisory scenarios. The supervisory scenarios may potentially incorporate events that have not occurred historically. It is not necessarily consistent with the purpose of a stress testing exercise to assume that the future will be like the past.

(b) In order to model potential outcomes outside the realm of historical experience, the Federal Reserve generally does not include variables that would capture unobserved historical patterns in supervisory models. The use of industry-level models, restricted use of firm-specific fixed effects (described below), and minimized use of dummy variables indicating a loan vintage or a specific year, ensure that the outcomes of the supervisory models are forward-looking, consistent and comparable across firms, and robust and stable.

(c) Firm-specific fixed effects are variables that identify a specific firm and capture unobserved differences in the revenues, expenses or losses between firms. Firm-specific fixed effects are generally not incorporated in supervisory models in order to avoid the assumption that unobserved firm-specific historical patterns will continue in the future. Exceptions to this policy are made where appropriate. For example, if granular portfolio-level data on key drivers of a covered company's performance are limited or unavailable, and firm-specific fixed effects are more predictive of a covered company's future performance than are industry-level variables, then supervisory models may be specified with firm-specific fixed effects.

(d) Models used in the supervisory stress test are developed according to an industry-level approach, calibrated using data from many institutions. In adhering to an industry-level approach, the Federal Reserve models the response of specific portfolios and instruments to variations in macroeconomic and financial scenario variables. In this way, the Federal Reserve ensures that differences across firms are driven by differences in firm-specific input data, as opposed to differences in model parameters or specifications. The industry approach to modeling is also forward-looking, as the Federal Reserve does not assume that historical patterns will necessarily continue into the future for individual firms. By modeling a portfolio or instrument's response to changes in economic or financial conditions at the industry level, the Federal Reserve ensures that projected future losses are a function of that portfolio or instrument's own characteristics, rather than the historical experience of the covered company. This policy helps to ensure that two firms with the same portfolio receive the same results for that portfolio in the supervisory stress test.

(e) The Federal Reserve minimizes the use of vintage or year-specific fixed effects when estimating models and producing supervisory projections. In general, these types of variables are employed only when there are significant structural market shifts or other unusual factors for which supervisory models cannot otherwise account. Similar to the firm-specific fixed effects policy, and consistent with the forward-looking principle, this vintage indicator policy is in place so that projections of future performance under stress do not incorporate assumptions that patterns in unmeasured factors from brief historical time periods persist. For example, the loans originated in a particular year should not be assumed to continue to default at a higher rate in the future because they did so in the past.

2.5. Treatment of Global Market Shock and Counterparty Default Component

(a) Both the global market shock and counterparty default components are exogenous components of the supervisory stress scenarios that are independent of the macroeconomic and financial market environment specified in those scenarios, and do not affect projections of risk-weighted assets or balances. The global market shock, which specifies movements in numerous market factors,[14] applies only to covered companies with significant trading exposure. The counterparty default scenario component applies only to covered companies with substantial trading or processing and custodian operations. Though these stress factors may not be directly correlated to macroeconomic or financial assumptions, they can materially affect covered companies' risks. Losses from both components are therefore considered in addition to the estimates of losses under the macroeconomic scenario.

(b) Counterparty credit risk on derivatives and repo-style activities is incorporated in supervisory modeling in part by assuming the default of the single counterparty to which the covered firm would be most exposed in the global market shock event.[15]

[14] *See* 12 CFR part 252, appendix A, ''Policy Statement on the Scenario Design Framework for Stress Testing,'' for a detailed description of the global market shock.

[15] In addition to incorporating counterparty credit risk by assuming the default of the covered company's largest counterparty, the Federal Reserve incorporates counterparty credit risk in the supervisory stress test by estimating mark-to-market

Continued

Requiring covered companies subject to the large counterparty default component to estimate and report the potential losses and effects on capital associated with such an instantaneous default is a simple method for capturing an important risk to capital for firms with large trading and custodian or processing activities. Engagement in substantial trading or custodial operations makes the covered companies subject to the counterparty default scenario component particularly vulnerable to the default of their major counterparty or their clients' counterparty, in transactions for which the covered companies act as agents. The large counterparty default component is consistent with the purpose of a stress testing exercise, as discussed in the principle about the focus on the ability to evaluate the impact of severe economic stress. The default of a covered company's largest counterparty is a salient risk in a macroeconomic and financial crisis, and generally less likely to occur in times of economic stability. This approach seeks to ensure that covered companies can absorb losses associated with the default of any counterparty, in addition to losses associated with adverse economic conditions, in an environment of economic uncertainty.

(c) The full effect of the global market shock and counterparty default components is realized in net income in the first quarter of the projection horizon in the supervisory stress test. The Board expects covered companies with material trading and counterparty exposures to be sufficiently capitalized to absorb losses stemming from these exposures that could occur during times of general macroeconomic stress.

2.6. Incorporation of Business Plan Changes

(a) The Federal Reserve incorporates material changes in the business plans of covered companies, including mergers, acquisitions, and divestitures over the projection horizon, in the supervisory stress test projections. The incorporation of business plan changes in the supervisory stress test is a requirement of the capital plan rule,[16] and captures a risk to the capital of covered companies. Allowing for the inclusion of mergers, acquisitions, and divestitures is forward-looking, as the Federal Reserve seeks to capture material impacts on a covered company's post-stress capital that may arise from a business plan change in the course of the projection horizon.

(b) The incorporation of business plan changes in supervisory projections is consistent with the purpose of a stress testing exercise, corresponding to the principle about the focus on the ability to evaluate the impact of severe economic stress. In CCAR specifically, the Board evaluates whether covered companies have the ability to complete firm-projected capital actions in the supervisory stress test, while remaining above post-stress minimum capital and leverage ratios. Business plan changes, such as mergers, acquisitions, or divestitures, may have material impacts on these firm-projected capital actions and on the projected ability of a covered company to make planned capital distributions and maintain capital ratios above regulatory minima.

(c) A consistent methodology for modeling of business plan changes is applied across covered companies. The data that are available about characteristics of assets being acquired or divested are generally limited and less granular than other data collected by the Board in the Capital Assessments and Stress Testing (FR Y–14) information collection. Projections of the effects of business plan changes may rely on less granular information and may result in a simpler modeling approach than supervisory projections for legacy portfolios or businesses.

2.7. Credit Supply Maintenance

(a) The supervisory stress test incorporates the assumption that aggregate credit supply does not contract during the stress period. The aim of supervisory stress testing is to assess whether firms are sufficiently capitalized to absorb losses during times of economic stress, while also meeting obligations and continuing to lend to households and businesses. The assumption that a balance sheet of consistent or increasing magnitude is maintained allows supervisors to evaluate the health of the banking sector assuming firms continue to lend during times of stress.

(b) In order to implement this policy, the Federal Reserve must make assumptions about new loan balances. To predict losses on new originations over the planning horizon, newly originated loans are assumed to have the same risk characteristics as the existing portfolio, where applicable, with the exception of loan age and delinquency status. These newly originated loans would be part of a covered company's normal business, even in a stressed economic environment. While an individual firm may assume that it reacts to rising losses by sharply restricting its lending (*e.g.,* by exiting a particular business line), the banking industry as a whole cannot do so without creating a ''credit crunch'' and substantially increasing the severity and duration of an economic downturn. The assumption that the magnitude of firm balance sheets will be fixed or growing in the supervisory stress test ensures that covered companies cannot assume they will ''shrink to health,'' and serves the Federal Reserve's goal of helping to ensure that major financial firms remain sufficiently capitalized to accommodate credit demand in a severe downturn. In addition, by precluding the need to make assumptions about how underwriting standards might tighten or loosen during times of economic stress, the Federal Reserve follows the principle of consistency and comparability and promotes consistency across covered companies.

2.8. Firm-Specific Overlays and Additional Firm-Provided Data

(a) The Federal Reserve does not make firm-specific overlays to model results used in the supervisory stress test. This policy ensures that the supervisory stress test results are determined solely by the industry-level supervisory models and by firm-specific input data. The Federal Reserve has instituted a policy of not using additional input data submitted by one or some of the covered companies unless comparable data can be collected from all the firms that have material exposure in a given area. Input data necessary to produce supervisory stress test estimates is collected via the FR Y–14 information collection. The Federal Reserve may request additional information from covered companies, but otherwise will not incorporate additional information provided as part of a firm's CCAR submission or obtained through other channels into stress test projections.

(b) This policy curbs the use of data only from firms that have incentives to provide it, as in cases in which additional data would support the estimation of a lower loss rate or a higher revenue rate, and promotes consistency across the stress test results of covered companies.

2.9. Treatment of Missing or Erroneous Data

(a) Missing data, or data with deficiencies significant enough to preclude the use of supervisory models, create uncertainty around estimates of losses or components of revenue. If data that are direct inputs to supervisory models are not provided as required by the FR Y–14 information collection or are reported erroneously, then a conservative value will be assigned to the specific data based on all available data reported by covered companies, depending on the extent of data deficiency. If the data deficiency is severe enough that a modeled estimate cannot be produced for a portfolio segment or portfolio, then the Federal Reserve may assign a conservative rate (*e.g.,* 10th or 90th percentile PPNR or loss rate, respectively) to that segment or portfolio.

(b) This policy promotes the principle of conservatism, given a lack of information sufficient to produce a risk-sensitive estimate of losses or revenue components using information on the true characteristics of certain positions. This policy ensures consistent treatment for all covered companies that report data deemed insufficient to produce a modeled estimate. Finally, this policy is simple and transparent.

2.10. Treatment of Immaterial Portfolio Data

(a) The Federal Reserve makes a distinction between insufficient data reported by covered companies for material portfolios and immaterial portfolios. To limit regulatory burden, the Federal Reserve allows covered companies not to report detailed loan-level or portfolio-level data for loan types that are not material as defined in the FR Y–14 reporting instructions. In these cases, a loss rate representing the median rates among covered companies for whom the rate is calculated will be applied to the immaterial portfolio. This approach is consistent across covered companies, simple, and transparent, and promotes the principles of consistency and comparability and simplicity.

3. Principles and Policies of Supervisory Model Validation

(a) Independent and comprehensive model validation is key to the credibility of

losses, credit valuation adjustment (CVA) losses, and incremental default risk (IDR) losses associated with the global market shock.

[16] 12 CFR 225.8(e)(2).

supervisory stress tests. An independent unit of validation staff within the Federal Reserve, with input from an advisory council of academic experts not affiliated with the Federal Reserve, ensures that stress test models are subject to effective challenge, defined as critical analysis by objective, informed parties that can identify model limitations and recommend appropriate changes.

(b) The Federal Reserve's supervisory model validation program, built upon the principles of independence, technical competence, and stature, is able to subject models to effective challenge, expanding upon efforts made by supervisory modeling teams to manage model risk and confirming that supervisory models are appropriate for their intended uses. The supervisory model validation program produces reviews that are consistent, thorough, and comprehensive. Its structure ensures independence from the Federal Reserve's model development function, and its prominent role in communicating the state of model risk to the Board of Governors assures its stature within the Federal Reserve.

3.1. Structural Independence

(a) The management and staff of the internal model validation program are structurally independent from the model development teams. Validators do not report to model developers, and vice versa. This ensures that model validation is conducted and overseen by objective parties. Validation staff's performance criteria include an ability to review all aspects of the models rigorously, thoroughly, and objectively, and to provide meaningful and clear feedback to model developers and users.

(b) In addition, the Model Validation Council, a council of external academic experts, provides independent advice on the Federal Reserve's process to assess models used in the supervisory stress test. In biannual meetings with Federal Reserve officials, members of the council discuss selective supervisory models, after being provided with detailed model documentation for and non-public information about those models. The documentation and discussions enable the council to assess the effectiveness of the models used in the supervisory stress tests and of the overarching model validation program.

3.2. Technical Competence of Validation Staff

(a) The model validation program is designed to provide thorough, high-quality reviews that are consistent across supervisory models.

(b) First, the model validation program employs technically expert staff with knowledge across model types. Second, reviews for every supervisory model follow the same set of review guidelines, and take place on an ongoing basis. The model validation program is comprehensive, in the sense that validators assess all models currently in use, expand the scope of validation beyond basic model use, and cover both model soundness and performance.

(c) The model validation program covers three main areas of validation: (1) Conceptual soundness; (2) ongoing monitoring; and (3) outcomes analysis. Validation staff evaluates all aspects of model development, implementation, and use, including but not limited to theory, design, methodology, input data, testing, performance, documentation standards, implementation controls (including access and change controls), and code verification.

3.3. Stature of Validation Function

(a) The validation program informs the Board of Governors about the state of model risk in the overall stress testing program, along with ongoing practices to control and mitigate model risk.

(b) The model validation program communicates its findings and recommendations regarding model risk to relevant parties within the Federal Reserve System. Validators provide detailed feedback to model developers and provide thematic feedback or observations on the overall system of models to the management of the modeling teams. Model validation feedback is also communicated to the users of supervisory model output for use in their deliberations and decisions about supervisory stress testing. In addition, the Director of the Division of Supervision and Regulation approves all models used in the supervisory stress test in advance of each exercise, based on validators' recommendations, development responses, and suggestions for risk mitigants. In several cases, models have been modified or implemented differently based on validators' feedback. The Model Validation Council also contributes to the stature of the Federal Reserve's validation program, by providing an external point of view on modifications to supervisory models and on validation program governance.

By order of the Board of Governors of the Federal Reserve System, February 22, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–03503 Filed 2–27–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0952; Airspace Docket No. 18–ASW–16]

RIN 2120–AA66

Amendment of Class E Airspace; Flippin, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Marion County Regional Airport, Flippin, AR, and Baxter County Airport, Mountain Home, AR, which is contained within the Flippin, AR, airspace legal description. This action is due to an airspace review caused by the decommissioning of the Flippin VHF omnidirectional range (VOR), which provided navigation information to the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the Marion County Regional Airport and name of Baxter County Airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, April 25, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.* FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at Marion County Regional Airport, Flippin, AR, and Baxter County Airport, Mountain Home, AR, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 60789; November 27, 2018) for Docket No. FAA–2018–0952 to amend Class E airspace extending upward from 700 feet above the surface at Marion County Regional Airport, Flippin, AR, and Baxter County Airport, Mountain Home, AR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by: Modifying the Class E airspace extending upward from 700 feet above the surface at Marion County Regional Airport, Flippin, AR, to within a 6.5-mile radius (increased from a 6.4-mile radius); removing the Flippin VOR/DME from the airspace legal description; removing the extension east of the airport; removing the city associated with the airport from the airspace legal description to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

And modifying the Class E airspace extending upward from 700 feet above the surface at Baxter County Airport (previously Baxter County Regional Airport), Mountain Home, AR, by removing the extension south of the airport associated with the Flippin VOR/DME; removing the city associated with the airport from the airspace legal description to comply with FAA Order 7400.2L; and updating the name of the airport to coincide with the FAA's aeronautical database. This action is the result of an airspace review caused by the decommissioning of the Flippin VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW AR E5 Flippin, AR [Amended]

Marion County Regional Airport, AR
(Lat. 36°17′27″ N, long. 92°35′25″ W)
Baxter County Airport, AR
(Lat. 36°22′08″ N, long. 92°28′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion County Regional Airport and within a 6.5-mile radius of Baxter County Airport.

Issued in Fort Worth, Texas, on February 20, 2019.

John A. Witucki,

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

[FR Doc. 2019–03284 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. FDA–2019–N–0646]

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or Agency) is amending its regulations to reflect a change of address for the Center for Drug Evaluation and Research's (CDER's) Office of Generic Drugs (OGD) Document Room from Rockville, MD, to Beltsville, MD. This action is being taken to ensure accuracy and clarity in the Agency's regulations.

DATES: This rule is effective April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Resnick, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7997.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in parts 312 and 314 (21 CFR parts 312 and 314) to reflect a change of address for CDER's OGD Document Room from Rockville, MD, to Beltsville, MD. The new address is as follows: Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266. This action is being taken to ensure accuracy and clarity in the Agency's regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to update a mailing address for those submissions not required to be submitted through FDA's Electronic Submission Gateway. Unless granted a waiver or exemption from the requirements of section 745A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379k–1), submissions under section 505(j) of the FD&C Act (21 U.S.C. 355(j)) are required to be submitted in electronic format.[1]

The amendments are as follows:

- In § 312.140(a)(1), the address for applicants to submit investigational new drug applications (INDs) for in vivo bioavailability and bioequivalence studies to support abbreviated new drug applications (ANDAs) is updated to the Beltsville Central Document Room location.
- In § 314.52(a)(2), for 505(b)(2) applicants submitting a patent certification, the address to send written or electronic communication to obtain the address of a new drug application (NDA) holder or its attorney, agent, or authorized official is updated to the Beltsville Central Document Room location.
- In § 314.53(f)(1), the address for persons other than the NDA holder to send patent listing dispute communication is updated to the Beltsville Central Document Room location.
- In § 314.95(a)(2), for ANDA applicants submitting a patent certification, the address to send written or electronic communication to obtain the address of an NDA holder or its attorney, agent, or authorized official is updated to the Beltsville Central Document Room location.
- In § 314.440(a)(2), the address for applicants to submit ANDAs, amendments, supplements, resubmissions, and correspondence not associated with an ANDA is updated to the Beltsville Central Document Room location.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312 and 314 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 2. In § 312.140, revise paragraph (a)(1) to read as follows:

§ 312.140 Address for correspondence.

(a) * * *

(1) *For drug products regulated by CDER.* Send the IND submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 3. The authority citation for part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 355f, 356, 356a, 356b, 356c, 356e, 360cc, 371, 374, 379e, 379k–1.

§ 314.52 [Amended]

■ 4. In § 314.52(a)(2), remove the text ''Orange Book Staff, Office of Generic Drugs, 7620 Standish Pl., Rockville, MD 20855'' and add in its place the text ''Central Document Room, Attn: Orange Book Staff, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

§ 314.53 [Amended]

■ 5. In § 314.53(f)(1), remove the text ''Office of Generic Drugs, OGD Document Room, Attention: Orange Book Staff, 7620 Standish Pl., Rockville, MD 20855'' and add in its place the text ''Central Document Room, Attn: Orange Book Staff, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

§ 314.95 [Amended]

■ 6. In § 314.95(a)(2), remove the text ''Orange Book Staff, Office of Generic Drugs, 7620 Standish Pl., Rockville, MD 20855'' and add in its place the text ''Central Document Room, Attn: Orange Book Staff, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

■ 7. In § 314.440, revise paragraph (a)(2) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, an abbreviated application under § 314.94, and amendments, supplements, and resubmissions should be directed to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266. This includes items sent by parcel post or overnight courier service. Correspondence not associated with an abbreviated application also should be addressed to 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

* * * * *

Dated: February 22, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03542 Filed 2–27–19; 8:45 am]

BILLING CODE 4164–01–P

[1] See FDA guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' (January 2019, Revision 6). We update guidances periodically. For the most recent version of a guidance, check the FDA guidance web page at *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2017–F–4511]

Food Additives Permitted in Feed and Drinking Water of Animals; Gamma-Linolenic Acid Safflower Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of gamma-linolenic acid safflower oil (GLA safflower oil) as a source of omega-6 fatty acids in dry food for adult cats in the maintenance life stage. This action is in response to a food additive petition filed by Arcadia Biosciences, Inc.

DATES: This rule is effective February 28, 2019. See section V of this document for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by April 1, 2019.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before April 1, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 1, 2019. Objections 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 objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting objections. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–2017–F–4511 for ''Food Additives Permitted in Feed and Drinking Water of Animals; Gamma-Linolenic Acid Safflower Oil.'' Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies in 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 objections. 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 objections 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 objections 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: Carissa Doody, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl. (HFV–228), Rockville, MD 20855, 240–402–6283, *carissa.doody@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** of September 14, 2017 (82 FR 43197), FDA announced that we had filed a food additive petition (animal use) (FAP 2302) submitted by Arcadia Biosciences. Inc., 202 Cousteau Pl., Suite 200, Davis, CA 95618. The petition proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of GLA safflower oil as a source of omega-6 fatty acids in dry food for adult cats in the maintenance life stage.

The petition for the safe use of GLA safflower oil as a source of omega-6 fatty acids in dry food for adult cats in the maintenance life stage (FAP 2302) indicated that the concentration of gamma-linolenic acid was between 350 and 450 milligrams (mg) gamma-linolenic acid per gram of the additive or the safflower oil blend. A previous petition (FAP 2275) that provided for the safe use of GLA safflower oil as a source of omega-6 fatty acids in dry food for adult dogs in the maintenance life stage indicated that the concentration of gamma-linolenic acid was between 400 and 450 mg gamma-linolenic acid per gram of the additive or the safflower oil blend (82 FR 38595, August 15, 2017).

In amending § 573.492 (21 CFR 573.492) to allow for the safe use of GLA safflower oil in dry food for adult cats, the current allowable concentration

range for gamma-linolenic acid in the additive or the safflower oil blend was amended to incorporate the broader range supported by FAP 2302. This does not adversely alter the technical effect from use of the additive in adult maintenance dog food because provisions in the August 15, 2017, rule (82 FR 38597), revised in paragraph (b)(2) of this rule, specify that adjustments must be made for differing concentrations of gamma-linolenic acid to meet other specified parameters.

II. Conclusion

FDA concludes that the data establish the safety and utility of GLA safflower oil as a source of omega-6 fatty acids in dry food for adult cats in the maintenance life stage and that the food additive regulations should be amended as set forth in this document. This is not a significant regulatory action subject to Executive Order 12866.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and documents we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

IV. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Revise § 573.492 to read as follows:

§ 573.492 Gamma-linolenic acid safflower oil.

The food additive, gamma-linolenic acid safflower oil, may be safely used in animal food as a source of gamma-linolenic acid and other omega-6 fatty acids in accordance with the following conditions:

(a) The additive is the oil obtained from whole seeds and/or partially dehulled seeds of a *Carthamus tinctorius* L. safflower Centennial variety genetically engineered to express the delta-6-desaturase gene from *Saprolegnia diclina* Humphrey. The 453 amino acid, delta-6-desaturase enzyme converts the fatty acid linoleic acid to gamma-linolenic acid (all-*cis*-6,9,12-octadecatrienoic acid) during seed development.

(1) The additive obtained from the seeds of the genetically engineered safflower Centennial variety may be blended with oil obtained from seeds of non-engineered oleic acid safflower varieties in order to meet the specifications required for the additive or the blend in paragraph (a)(2) of this section.

(2) The additive or a safflower oil blend containing the additive for use in animal food meets the following specifications:

(i) Crude fat content of the additive or the safflower oil blend is not less than 99.5 percent.

(ii) Gamma-linolenic acid content is between 350 and 450 milligrams (mg) gamma-linolenic acid per gram of the additive or the safflower oil blend.

(iii) Total content of stearidonic acid and *cis, cis*-6,9-octadecadienoic acid in the additive or the safflower oil blend must not exceed a total of 0.3 percent.

(b) Addition of the additive, or the safflower oil blend, to complete dry adult maintenance dog food must meet the following:

(1) Addition of the additive or the safflower oil blend cannot provide more than 36 mg gamma-linolenic acid per kilogram body weight of the dog per day in more than 86 mg of the additive or the safflower oil blend. This maximum addition rate of the additive, or the safflower oil blend, is 0.3 percent of a complete dry adult maintenance dog food containing 3,600 kilocalories of metabolizable energy per kilogram of food as-fed.

(2) Adjustments must be made for differing concentrations of gamma-linolenic acid and for dog food formulas of different caloric density and/or that are fed to specific weights, breeds, or dogs of different activity levels to meet the requirements of this paragraph.

(c) Addition of the additive, or the safflower oil blend, to complete dry adult maintenance cat food must meet the following:

(1) Addition of the additive or the safflower oil blend cannot provide more than 33 mg gamma-linolenic acid per kilogram body weight of the cat per day in more than 79 mg of the additive or the safflower oil blend. This maximum addition rate of the additive, or the safflower oil blend, is 0.5 percent of a complete dry adult maintenance cat food containing 4,000 kilocalories of metabolizable energy per kilogram of food as-fed.

(2) Adjustments must be made for differing concentrations of gamma-linolenic acid and for cat food formulas of different caloric density and/or that are fed to specific weights, breeds, or cats of different activity levels to meet the requirements of this paragraph.

(d) To assure safe use of the additive, in addition to other information required by the Federal Food, Drug, and Cosmetic Act, the label and labeling of the additive shall bear the following:

(1) The name of the additive, gamma-linolenic acid safflower oil, or GLA safflower oil;

(2) A guarantee for the minimum content of gamma-linolenic acid; and

(3) Adequate directions for use such that the finished animal food complies with the provisions of paragraphs (b) and (c) of this section.

Dated: February 22, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03514 Filed 2–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 110

[Docket ID: DOD–2018–OS–0046]

RIN 0790–AK32

Standard Rates of Subsistence Allowance and Commutation Instead of Uniforms for Members of the Senior Reserve Officers' Training Corps

AGENCY: Office of the Under Secretary for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation which provides internal processes and accounting information in order to provide subsistence and commutation instead of uniforms to members of Senior Reserve Officers' Training Corps (ROTC) programs located at eligible colleges and universities. Examples of eligible colleges and universities include The Citadel and Virginia Military Institute where students wear a uniform prescribed by the institution instead of Service-specific uniforms.

DATES: This rule is effective on February 28, 2019.

FOR FURTHER INFORMATION CONTACT: LTCOL Naomi Y. Henigin, 703–695–5529.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department's issuance website. DoD internal guidance concerning subsistence and commutation to members of Senior ROTC programs located at eligible colleges and universities will continue to be published in DoD Instruction 1215.08, ''Senior Reserve Officers' Training Corps (ROTC) Programs,'' available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/121508p.pdf?ver=2019-01-29-121836-737.*

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

List of Subjects in 32 CFR Part 110

Armed forces reserves, Colleges and universities. Reporting and recordkeeping requirements. Wages.

PART 110—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 110 is removed.

Dated: February 25, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03517 Filed 2–27–19; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0309; FRL–9988–79–OAR]

RIN 2060–AT47

National Emission Standards for Hazardous Air Pollutants: Wet-Formed Fiberglass Mat Production Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Wet-Formed Fiberglass Mat Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing startup, shutdown, and malfunction (SSM), electronic reporting, and clarification of rule provisions. These final amendments address emissions during periods of SSM; add electronic reporting; revise certain monitoring, recordkeeping, and reporting requirements; and include other miscellaneous technical and editorial changes. These final amendments will result in improved compliance and implementation of the rule.

DATES: This final rule is effective on February 28, 2019. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of February 28, 2019.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0309. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Keith Barnett, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5605; fax number: (919) 541–4991; and email address: *barnett.keith@epa.gov.* For specific information regarding the risk modeling methodology, contact Ted Palma, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5470; fax number: (919) 541–0840; and email address: *palma.ted@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, U.S. EPA Region 5 (Mail Code E–19J), 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 353–6266; and email address: *ayres.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICR information collection request
km kilometer
MACT maximum achievable control technology

MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OSHA Office of Safety and Health Administration
PRA Paperwork Reduction Act
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SDS safety data sheet
SSM startup, shutdown, and malfunction
the Court United States Court of Appeals for the District of Columbia Circuit
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standards

Background information. On April 6, 2018, the EPA proposed revisions to the Wet-Formed Fiberglass Mat Production NESHAP based on our RTR (83 FR 14997). In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in ''Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,'' Docket ID No. EPA–HQ–OAR–2004–0309. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

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

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the Wet-Formed Fiberglass Mat Production source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the Wet-Formed Fiberglass Mat Production source category in our April 6, 2018, proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the Wet-Formed Fiberglass Mat Production source category?
B. What are the final rule amendments based on the technology review for the Wet-Formed Fiberglass Mat Production source category?
C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?
D. What other changes have been made to the NESHAP?
E. What are the effective and compliance dates of the standards?
F. What are the requirements for submission of performance test data to the EPA?
IV. What is the rationale for our final decisions and amendments for the Wet-Formed Fiberglass Mat Production source category?
A. Residual Risk Review for the Wet-Formed Fiberglass Mat Production Source Category
B. Technology Review for the Wet-Formed Fiberglass Mat Production Source Category
C. Startup, Shutdown, and Malfunction for the Wet-Formed Fiberglass Mat Production Source Category
D. Other Revisions To Monitoring, Performance Testing, and Reporting Requirements for the Wet-Formed Fiberglass Mat Production Source Category
E. Requirements for Submission of Performance Tests for the Wet-Formed Fiberglass Mat Production Source Category
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

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

NESHAP and source category	NAICS code [1]
Wet-Formed Fiberglass Mat Production	327212

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/wet-formed-fiberglass-mat-production-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by April

29, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3); *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 640 (D.C. Cir. 2000). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 83 FR 14984, April 6, 2018.

B. What is the Wet-Formed Fiberglass Mat Production source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Wet-Formed Fiberglass Mat Production NESHAP on April 11, 2002 (67 FR 17824). The standards are codified at 40 CFR part 63, subpart HHHH. The Wet-Formed Fiberglass Mat Production industry consists of facilities that use formaldehyde-based resins to bond glass fibers together to make wet-formed fiberglass mat, which can be used as a substrate for multiple roofing products, as reinforcement for various plastic, cement, and gypsum products, and in miscellaneous specialty products. Methanol is also present in some, but not all, resins used to produce wet-formed fiberglass mat. In a typical wet-formed fiberglass mat production line, glass fibers are mixed with water and emulsifiers in large mixing vats to form a slurry of fibers and water. The glass fiber slurry is then pumped to a mat forming machine, where it is dispensed in a uniform curtain over a moving screen belt. The mat is then carried beneath a binder saturator, where binder solution is uniformly applied onto the surface of the mat. This resin-binder application process includes the screen passing over a vacuum, which draws away the excess binder solution for recycling. The mat of fibers and binder then passes into drying and curing ovens that use heated air to remove excess moisture and harden (*i.e.,* cure) the binder. Upon exiting the ovens, the mat is cooled, trimmed, wound, and packaged to product specifications. The primary HAP emitted during production of wet-formed fiberglass mat is formaldehyde, which is classified as a probable human carcinogen; and methanol, which is not classified as a carcinogen. The source category covered by this MACT standard currently includes seven facilities.

The affected source is each wet-formed fiberglass mat drying and curing oven. The NESHAP regulates emissions

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

of HAP through emission standards for formaldehyde, which is also used as a surrogate for total HAP emissions. Facilities subject to the NESHAP must meet either a mass emission limit or percentage reduction requirement for each drying and curing oven. The emission standards are the same for new and existing drying and curing ovens. The emission limits for the exhaust from new and existing drying and curing ovens are: (1) A maximum formaldehyde emission rate of 0.03 kilograms per megagram of wet-formed fiberglass mat produced (0.05 pounds per ton of wet-formed fiberglass mat produced) or (2) a minimum of 96-percent destruction efficiency of formaldehyde. Thermal oxidizers are used by facilities subject to the NESHAP to control their drying and curing oven exhausts.

C. What changes did we propose for the Wet-Formed Fiberglass Mat Production source category in our April 6, 2018, proposal?

On April 6, 2018, the EPA published a proposed rule in the **Federal Register** for the Wet-Formed Fiberglass Mat Production NESHAP, that took into consideration the RTR analyses (83 FR 14997, April 6, 2018). Based on the residual risk analysis, we proposed that risks from the source category are acceptable, that the NESHAP provides an ample margin of safety to protect public health, and that a more stringent standard is not necessary to prevent an adverse environmental effect. Accordingly, we did not propose revisions to the numerical emission limits based on our residual risk analysis. Based on the technology review, we proposed that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Accordingly, we did not propose any changes under the technology review. In addition, we proposed amendments to the SSM provisions and revisions to monitoring, recordkeeping, and reporting requirements in the following three ways: (1) Performance test results would be submitted electronically; (2) compliance reports would be submitted semiannually when deviations from applicable standards occur; and (3) parameter monitoring would no longer be required during periods when a non-HAP binder is being used. We also proposed miscellaneous technical and editorial changes.

III. What is included in this final rule?

This action finalizes the EPA's determinations for the Wet-Formed Fiberglass Mat Production source category pursuant to CAA sections 112(d)(6) and (f)(2). This action also finalizes other changes to the NESHAP, including amendments to the SSM provisions and a change to the proposed definition of ''shutdown'' to reflect comments we received on the proposal. Other changes include revisions to monitoring, recordkeeping, and reporting requirements to require electronic submittal of performance test report results; submittal of semiannual compliance reports for when deviations from applicable standards occur; and removal of parameter monitoring and performance testing requirements during periods when a non-HAP binder is being used. We are also finalizing miscellaneous technical and editorial changes that we proposed in April 2018. This action also reflects several changes to certain aspects of the April 2018 proposal that are in response to comments received during the public comment period. These changes are described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the Wet-Formed Fiberglass Mat Production source category?

This section introduces the final amendments to the Wet-Formed Fiberglass Mat Production NESHAP being promulgated pursuant to CAA section 112(f). As proposed, we are finalizing our finding that risks remaining after implementation of the existing MACT standards for this source category are acceptable. Also as proposed, we are finalizing the determination that the current NESHAP provides an ample margin of safety to protect public health. Therefore, we are not finalizing any revisions to the numerical emission limits based on these analyses conducted under CAA section 112(f).

B. What are the final rule amendments based on the technology review for the Wet-Formed Fiberglass Mat Production source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

We are finalizing proposed amendments to the Wet-Formed Fiberglass Mat Production NESHAP to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

As proposed, we have eliminated the SSM exemption, which is contained in 40 CFR 63.2986(g)(1). Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in this rule that apply at all times. As explained at proposal, we have also revised Table 2 to 40 CFR part 63, subpart HHHH (the General Provisions applicability table), in several respects. For example, we have eliminated the incorporation of the General Provisions' requirement for a source to develop an SSM plan. We have also eliminated and revised certain recordkeeping and reporting requirements that are related to the SSM exemption as described in detail in the proposed rule and summarized again here.

In establishing the standards in this rule, the EPA has taken into account periods of startup and shutdown and, for the reasons explained in the April 2018 proposal and below, has not established alternate standards for those periods.

As explained at proposal, periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. As also explained at proposal, because thermal oxidizer controls are employed during all periods that a drying and curing oven is processing binder-infused fiberglass mat, there is no need to establish separate formaldehyde standards for periods of startup and shutdown (83 FR 14998). We did, however, propose definitions of startup and shutdown for purposes of this subpart. The proposed definitions clarified that it is not the setting in and cessation of operation of the drying and curing oven (*i.e.,* affected source) that accurately define startup and shutdown, but, rather, the setting in and cessation of operation of the drying and curing of any binder-infused fiberglass mat. We also explained that it is this binder-infused fiberglass mat, not the ovens themselves, that emit HAP. Therefore, we found that it was appropriate to establish definitions for startup and shutdown based on the setting in and

cessation of operation of the drying and curing oven. Further, in response to comments on our proposal, we have made minor clarifications to the definition of shutdown in the final rule in order to account for the residence time of the binder-infused fiberglass mat in the oven, and to aid facilities in establishing periods of shutdown when emissions from the drying oven cease. We have also revised definitions for startup and shutdown to consistently refer to the material being processed as ''binder-infused fiberglass mat.'' Finally, we have added a definition of ''maximum residence time'' to 40 CFR 63.3004 and a formula that facilities must use to determine the maximum residence time for each production line.

This reflects the Agency's response to comments received on our proposal that indicated shutdown would end when the maximum residence time has elapsed after binder-infused fiberglass mat is no longer entering the oven. Typically, residence times are of short duration for wet-formed fiberglass mat lines, and are on the order of less than 10 seconds to less than 1 minute. The maximum residence time is the longest time that a particular point on the fiberglass mat could remain in the drying and curing oven, and is based on the length of the drying and curing oven and the slowest line speed normally operated on the line, excluding periods of ramping up to speed during startup. Air pollution controls continue to operate through shutdown, and all emissions from the ovens continue to be routed to the air pollution control equipment until shutdown is completed.

With regard to malfunctions, the EPA did not propose separate standards for periods of malfunction. At proposal, we explained our interpretation of CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. We noted that this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). The EPA further explained that, ''although no statutory language compels EPA to set standards for malfunctions, EPA has the discretion to do so where feasible. EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions'' (83 FR 14999).

The EPA is not finalizing separate standards for periods of malfunction. While we requested comment for work practice standards during periods of malfunction, and received some information in support of such standards, we did not receive sufficient information on which to base a malfunction standard.

As further explained at proposal, ''[i]n the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventive and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction). If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal District Court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate'' (83 FR 14999).

The following aspects for the SSM provisions are being finalized as proposed, with minor corrections and clarifications.

1. 40 CFR 63.2986 General Duty

As discussed at proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''no.'' At proposal, we explained that 40 CFR 63.6(e)(1)(i) describes the general duty to minimize emissions and contains language that we consider no longer necessary or appropriate in light of the elimination of the SSM exemption. We proposed adding general duty regulatory text at 40 CFR 63.2986(g) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. We further explained that the current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM, and that with the elimination of the SSM exemption, there would be no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA proposed for 40 CFR 63.2986(g) did not include that language from 40 CFR 63.6(e)(1). These revisions are being finalized as proposed, with the exception of minor grammatical corrections and clarifications.

Consistent with our proposal, we are also revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, 40 CFR 63.6(e)(1)(ii) imposes requirements that are either not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2986.

2. SSM Plan

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify recordkeeping and reporting requirements related to the SSM plan. As noted at proposal, the EPA is removing the SSM exemption. Therefore, affected units will be subject to an emission standard during such events. We believe that the applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

3. Compliance with Standards

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, the current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is revising standards in this rule to apply at all times. This change means that sources would no longer be exempt from nonopacity standards during periods of SSM.

4. 40 CFR 63.2992 Performance Testing

Consistent with our proposal, we are revising the General Provisions table

(Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, 40 CFR 63.7(e)(1) describes performance testing requirements and, in order to reflect the removal of the SSM exemption, the EPA proposed adding performance testing requirements at 40 CFR 63.2992(e). The revised regulatory text does not include the language in 40 CFR 63.7(e)(1) that restates the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing and the revised performance testing provisions exclude periods of startup and shutdown. Similar to 40 CFR 63.7(e)(1), the revisions to 40 CFR 63.2992(e) specify that performance tests conducted under this subpart should not be conducted during malfunctions; as noted at proposal, conditions during malfunctions are often not representative of normal operating conditions. We also proposed adding language that would require the owner or operator to record both the process information that is necessary to document operating conditions during performance testing and an explanation to support that such conditions represent normal operation. We explained that 40 CFR 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request, but does not specifically require the information to be recorded. We further explained that the regulatory text the EPA is adding to this provision builds on that requirement and makes explicit the requirement to record the information. These revisions are being finalized as proposed, with the exception of minor grammatical corrections and clarifications.

5. Monitoring

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.8(d)(3) by changing the ''yes'' in column 3 to a ''no.'' At proposal, we had explained that the final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement that is no longer applicable. The EPA also proposed adding text in 40 CFR 63.2994(a)(2) that is identical to 40 CFR 63.8(d)(3) except that the final sentence would be replaced with the following sentence: ''You should include the program of corrective action in the plan required under § 63.8(d)(2).''

6. 40 CFR 63.2998 Recordkeeping

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, 40 CFR 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recordkeeping provisions are no longer necessary with the removal of the SSM exemption, and, instead, the EPA is extending the requirements for recordkeeping and reporting under normal operations to startup and shutdown. As also previously explained in response to comments, we have revised the definition of shutdown in order to account for the residence time of the binder-infused fiberglass mat in the oven to help sources establish periods of shutdown and to determine when HAP emissions from ovens would cease. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, additional recordkeeping for startup and shutdown periods is now limited to records used to establish the maximum residence time that any binder-infused fiberglass mat would remain in the drying and curing oven and to determine the time of shutdown. As discussed in section III.C of this preamble, shutdown ends when the maximum residence time has elapsed after binder infused fiberglass mat is no longer entering the oven. The maximum residence time must be determined for each production line. Typically, residence times are very short for wet-formed fiberglass mat lines, on the order of less than 10 seconds to less than 1 minute. Therefore, we are also requiring facilities to maintain records showing how the maximum residence time was derived for each line.

Consistent with our proposal, we are also revising the General Provisions table (Table 2 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' At proposal, we explained that 40 CFR 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction and we proposed adding the same requirements to 40 CFR 63.2998(g). We noted, however, that the proposed regulatory text differs from the General Provisions given that 40 CFR 63.10(b)(2)(ii) requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. Instead, we proposed recordkeeping requirements for any failure to meet an applicable standard and also proposed requiring that the source record the date, time, and duration of the failure rather than an ''occurrence.'' The EPA also proposed adding to 40 CFR 63.2998(g) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. We also provided examples of such methods, which included product-loss calculations, mass-balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA further proposed requiring sources to keep records of information related to any failure to meet applicable standards in order to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that documents how the source met the general duty requirement to minimize emissions when the source failed to meet an applicable standard.

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, when applicable, this provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. This requirement is no longer appropriate because SSM plans will no longer be required. We further explained that the requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions would now be applicable by reference to 40 CFR 63.2988(g).

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart

HHHH) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, when applicable, this provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. As further explained, the requirement is no longer appropriate because SSM plans will no longer be required.

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, with the elimination of the SSM exemption, 40 CFR 63.10(c)(15), which allows an owner or operator to either use the affected source's SSM plan or keep records to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), and the requirements of 40 CFR 63.10(c)(10) through (12), is now superfluous. Consistent with our proposal, the EPA is eliminating this requirement because SSM plans are no longer required.

7. 40 CFR 63.3000 Reporting

Consistent with our proposal, we are revising the General Provisions table (Table 2 to 40 CFR part 63, subpart HHHH) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' As explained at proposal, 40 CFR 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA proposed adding reporting requirements to 40 CFR 63.3000(c). We explained that the replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. Subject to the correction described below, we are promulgating language requiring sources that fail to meet an applicable standard at any time to report the relevant information concerning such events in a compliance report. Compliance reporting on a quarterly basis is currently required under the existing NESHAP. We are changing this reporting period from a quarterly (four times a year) to a semiannual (twice a year) basis, as discussed further below. We are also correcting an error that occurred at publication of the proposed rule where the published rule text inadvertantly included the same proposed revisions for both 40 CFR 63.3000(c)(5) and (6), and did not read as explained in the proposal (83 FR 15000). These provisions specify the content requirements for semiannual compliance reports before and after the compliance date for this final rule. We did not receive any comments on the proposed language for these provisions. We are correcting 40 CFR 63.3000(c)(5) by including the correct language, which specifies that the content requirements of semiannual compliance reports prior to the compliance date for this final rule would include the existing rule requirements. We are also correcting 40 CFR 63.3000(c)(6) to indicate that after the compliance date for this rule, the report must contain the number, date, time, duration, and the cause of such events (including whether the cause is unknown, if applicable), a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. As previously explained, examples of such methods include product-loss calculations, mass-balance calculations, direct measurements, or engineering judgment based on known process parameters. It also includes calculations for maximum residence time to reflect revisions being made in the final rule in response to comments on the proposed definition of shutdown. The EPA is promulgating this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty requirement to minimize emissions during a failure to meet an applicable standard.

As also proposed, we will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because, as previously discussed, such plans are no longer required. The final amendments, therefore, specify in 40 CFR 63.3000(d) that the SSM reports (required by 40 CFR 63.10(d)(5)) are no longer required after the compliance dates for this rule. Malfunction events will be reported in otherwise required reports having similar format and submittal requirements, so these reporting specifications are unnecessary and are being removed.

8. Definitions

We are promulgating definitions of ''Startup,'' ''Shutdown,'' and ''Maximum residence time'' in 40 CFR 63.3004. The current rule relies on the 40 CFR part 63, subpart A, definitions of startup and shutdown, which are based on the setting in operation, and cessation of operation, of the affected source (*i.e.,* drying and curing oven). As previously explained in the proposal (83 FR 15001) and in this section, the formaldehyde standards could only be exceeded during periods that fiberglass mat is being dried and cured in the oven. As also previously explained, because the EPA is requiring standards in this rule to apply at all times, we are promulgating definitions of startup and shutdown based on these periods to clarify that it is the commencing of operation and cessation of operation of the drying and curing of binder-infused fiberglass mat, plus the maximum residence time of that mat in the oven, that defines shutdown for purposes of 40 CFR part 63, subpart HHHH. We are finalizing a defintion indicating that shutdown occurs when binder-infused fiberglass mat ceases to enter the oven, in addition to the maximum residence time that fiberglass mat remains in the oven, as determined for each production line. According to comments we received at proposal, once the maximum residence time has elapsed, the mat is cured and dried, and is not emitting any organic HAP; there are no emissions at this point. We have also added a definition for ''maximum residence time'' and a formula for how the residence time must be determined for each production line (*i.e.,* each drying and curing oven). We have described these changes in section III.C of this preamble, and made minor clarifications to definitions of both startup and shutdown in response to comments on our proposal, as described in section IV.C of this preamble.

For the reasons described in the preamble to the proposed rule, we are also finalizing the proposed definition of ''Deviation'' in 40 CFR 63.3004 to remove language that differentiates between normal operations, startup and shutdown, and malfunction events. We received no comments on the proposed changes. The final rule also corrects a publication error in the proposed rule. The proposed rule, as published, incorrectly included two different definitions of ''Deviation.'' The final rule provides definitions of ''Deviation'' both prior to and after the compliance dates for this final rule. Specifically, prior to the compliance dates for this rule, deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source: (1) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit, or work practice standard; (2) fails to meet any term or condition that is adopted to implement an applicable requirement in the subpart and that is

included in the operating permit for any affected source required to obtain such a permit; or (3) fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by the subpart.

After the compliance dates for this rule, deviation means any instance in which an affected source subject to the subpart, or an owner or operator of such a source: (1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard or (2) fails to meet any term or condition that is adopted to implement an applicable requirement in the subpart and that is included in the operating permit for any affected source required to obtain such a permit.

D. What other changes have been made to the NESHAP?

The EPA is promulgating revisions to monitoring, recordkeeping, and reporting requirements for this NESHAP in the following three ways: (1) Performance test results would be submitted electronically; (2) compliance reports would be submitted semiannually when deviations from applicable standards occur; and (3) parametric monitoring would no longer be required during periods when a non-HAP binder is being used. These provisions are being finalized as proposed, with minor corrections and clarifications.

Additionally, we proposed to reduce parametric monitoring and recording for facilities using non-HAP binders and solicited comment on exempting performance testing for such facilities. Consistent with our proposal, we are adopting the parametric monitoring exemption for facilities using non-HAP binders, as discussed in section III.D.2 of this preamble). Based on a review of comments received, we are also finalizing an exemption from performance testing requirements for drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders, which is discussed in section III.D.3 of this preamble. We are also finalizing several clarifying revisions to the rule, such as requirements for submittal of performance test data, which is discussed in section III.F of this preamble. The requirements for submittal of semiannual compliance reports, parametric monitoring requirements for facilities using non-HAP binders, exemption of performance testing requirements for facilities that are limited to the use of only non-HAP binders, and technical and editorial clarifications are discussed below in this section.

1. Frequency of Compliance Reports

The EPA is revising 40 CFR 63.3000(c) to require that compliance reports be submitted on a semiannual basis in all instances, with minor changes from proposal. Reporting on a semiannual basis will adequately provide a check on the operation and maintenance of process, control, and monitoring equipment and identify any problems with complying with rule requirements. The final rule specifies when facilities must begin transitioning from quarterly to semiannual reporting for deviations.

2. Parametric Monitoring and Recording During Use of Binder Containing No HAP

The EPA is promulgating the provision that during periods when the binder formulation being used to produce mat does not contain any HAP (*i.e.,* formaldehyde or any other HAP listed under section 112(b) of the CAA), owners and operators will not be required to monitor or record any of the parameters listed in Table 1 to 40 CFR part 63, subpart HHHH, including control device parameters. For each of these periods, we are requiring that owners and operators record the dates and times that production of mat using a non-HAP binder began and ended. To clearly identify these periods when the binder formulation being used to produce mat does not contain any HAP, we are promulgating revisions to 40 CFR 63.2984, 63.2996, and 63.2998 and Table 1 to 40 CFR part 63, subpart HHHH, and also promulgating a definition of ''Non-HAP binder'' in 40 CFR 63.3004. As discussed in section IV.D of this preamble, we have revised the definition of ''Non-HAP binder'' from proposal to clarify that non-HAP binder must meet the Office of Safety and Health Administration (OSHA) Hazard Communication Standard's criteria for disclosing composition or ingredients in Section 3 of the safety data sheet (SDS), except when the manufacturer has withheld identifying information of the chemical. The affected source may not rely on a SDS for a non-HAP binder where the manufacturer withholds the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture from Section 3 of the SDS. In addition, the affected source may not withhold this information when making the case that a binder used is a non-HAP binder. See section IV.D of this preamble for additional information.

3. Exemption of Performance Testing for Facilities Subject to Federally Enforceable Permit Requirements

At proposal, the EPA solicited comment on the exemption from performance testing requirements for drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders (83 FR 15005). The EPA received supportive comments for this exemption. Thus, we are promulgating revisions to 40 CFR 63.2991 to provide that drying and curing ovens using exclusively non-HAP binders and that are subject to a federally enforceable permit limit for such non-HAP binders are not required to conduct periodic performance tests. This revision will reduce burden for owners and operators that have switched to using only non-HAP binders without any increase in HAP emissions. Owners and operators of drying and curing ovens that do not have a federally-enforceable permit limit and that are currently permitted to use HAP-containing binders will still be required to conduct periodic performance testing, even if they are not currently using binders that contain HAP.

4. Technical and Editorial Changes

We are finalizing several clarifying revisions to the final rule as described in Table 2 of this preamble.

TABLE 2—MISCELLANEOUS CHANGES TO 40 CFR PART 63, SUBPART HHHH

Section of subpart HHHH	Description of change
40 CFR 63.2984	• Amend paragraph (a)(4) to clarify compliance with a different operating limit means the operating limit specified in paragraph (a)(1). • Amend paragraph (e) to allow use of a more recent edition of the currently referenced ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, *i.e.,* the appropriate chapters of ''*Industrial Ventilation: A Manual of Recommended Practice for Design*'' (27th edition), or an alternate as approved by the Administrator. • Revise text regarding IBR in paragraph (e) by replacing the reference to 40 CFR 63.3003 with, instead, 40 CFR 63.14.
40 CFR 63.2985	• Amend paragraphs (a) and (b) and add new paragraph (d) to clarify the compliance dates for provisions related to these amendments.
40 CFR 63.2993	• Correct paragraphs (a) and (b) to update a reference. • Re-designate paragraph (c) as paragraph (e) and amend the newly designated paragraph to clarify that EPA Method 320 (40 CFR part 63, appendix A) is an acceptable method for measuring the concentration of formaldehyde. • Add new paragraph (c) to clarify that EPA Methods 3 and 3A (40 CFR part 60, appendix A–2) are acceptable methods for measuring oxygen and carbon dioxide concentrations needed to correct formaldehyde concentration measurements to a standard basis. • Add new paragraph (d) to clarify that EPA Method 4 (40 CFR part 60, appendix A–3) is an acceptable method for measuring the moisture content of the stack gas.
40 CFR 63.2999	• Amend paragraph (b) to update the list of example electronic medium on which records may be kept. • Add paragraph (c) to clarify that any records that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format.
40 CFR 63.3003	• Remove text and reserve the section consistent with revisions to the IBR in 40 CFR 63.14.

E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on February 28, 2019.

The compliance date for existing wet-formed fiberglass mat drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 9, 2018 is no later than 180 days after February 28, 2019. As we stated in the preamble to the proposed rule, we are allowing 180 days for owners and operators of such affected sources to comply with the rule, giving them time to read and understand the amended rule requirements; to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test electronic submission capabilities, and reliably employ electronic reporting; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule, and make any necessary adjustments; to adjust parameter monitoring and recording systems to accommodate revisions for periods of non-HAP binder use; and to update their operation, maintenance, and monitoring (OMM) plan to reflect the revised requirements. The compliance date for wet-formed fiberglass mat curing ovens constructed or reconstructed after April 6, 2018 is at startup or February 28, 2019, whichever is later.

F. What are the requirements for submission of performance test data to the EPA?

The EPA is finalizing the proposed requirement for owners and operators of wet-formed fiberglass mat production facilities to submit electronic copies of certain required performance test reports through EPA's Central Data Exchange (CDX) using the CEDRI. The final rule requires that performance test reports be submitted using the Electronic Reporting Tool (ERT). We are finalizing these requirements as proposed, with minor clarifications for the written notification of delayed reporting, as discussed in section IV.E of this preamble.

IV. What is the rationale for our final decisions and amendments for the Wet-Formed Fiberglass Mat Production source category?

For each issue, this section describes what we proposed and what we are finalizing for each issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the Wet-Formed Fiberglass Mat Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the Wet-Formed Fiberglass Mat Production source category?

Pursuant to CAA section 112(f), we conducted a risk review and presented the results for the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the April 6, 2018, proposed rule for the Wet-Formed Fiberglass Mat Production source category (83 FR 14984). The results of the risk assessment are presented briefly in Table 3 of this preamble and in more detail in the residual risk document titled *Residual Risk Assessment for the Wet-Formed Fiberglass Mat Production Source Category in Support of the November 2018 Risk and Technology Review Final Rule,* which is in the docket for this action.

TABLE 3—WET-FORMED FIBERGLASS MAT PRODUCTION INHALATION RISK ASSESSMENT RESULTS IN THE APRIL 2018 PROPOSAL

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic non-cancer TOSHI [3]		Maximum screening acute non-cancer HQ [4]
	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level	Based on allowable emissions level	Based on actual emissions level
7	0.8	1	0	60	0.0003	0.0009	0.006	0.009	HQ_{REL} = 0.6 (formaldehyde).

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum target organ specific hazard index (TOSHI) value. The target organ with the highest TOSHI for the Wet-Formed Fiberglass Mat Production source category is the respiratory target organ.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the reference exposure level (REL). When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the chronic inhalation cancer risk assessment, based on actual emissions, show the cancer maximum individual risk (MIR) posed by the seven facilities is less than 1-in-1 million, with formaldehyde as the major contributor to the risk. The total estimated cancer incidence from this source category is 0.0003 excess cancer cases per year, or one excess case every 3,000 years. There were no cancer risks above 1-in-1 million from HAP emitted from the seven facilities in this source category. The maximum chronic noncancer hazard index (HI) value for the source category could be up to 0.006 (respiratory) driven by emissions of formaldehyde. No one is exposed to TOSHI levels above 1.

We also evaluated the cancer risk at the maximum emissions allowed by the MACT standard, or ''MACT-allowable emissions.'' Risk results from the inhalation risk assessment using the MACT-allowable emissions indicate that the cancer MIR could be as high as 1-in-1 million with formaldehyde emissions driving the risks, and that the maximum chronic noncancer TOSHI value could be as high as 0.009 at the MACT-allowable emissions level with formaldehyde emissions driving the TOSHI. The total estimated cancer incidence from this source category considering allowable emissions is expected to be about 0.0009 excess cancer cases per year or one excess case every 1,000 years. Based on MACT-allowable emission rates, there were no cancer risks above 1-in-1 million.

Table 3 of this preamble indicates that for the Wet-Formed Fiberglass Mat Production source category, the maximum hazard quotient (HQ) is 0.6, driven by formaldehyde. We conducted a screening analysis of the worst-case acute HQ for every HAP that has an acute dose-response value (formaldehyde and methanol). Based on actual emissions, the highest screening acute HQ value was 0.6 (based on the acute reference exposure level (REL) for formaldehyde). The results showed that no HQ values exceeded 1. Because none of the screening HQ were greater than 1, further refinement of the estimates was not warranted.

An assessment of risk from facility-wide emissions was performed to provide context for the source category risks. The results of the facility-wide (both MACT and non-MACT sources, *i.e.,* sources at the facility that are not included in the Wet-Formed Fiberglass source category) assessment indicate that four of the seven facilities included in the analysis have a facility-wide cancer MIR greater than 1-in-1 million. The maximum facility-wide cancer MIR is 6-in-1 million, mainly driven by formaldehyde emissions from non-MACT sources. The total estimated cancer incidence from the seven facilities is 0.001 excess cancer cases per year, or one excess case every 1,000 years. Approximately 13,000 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the seven facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be less than 1 (at a respiratory HI of 0.5), mainly driven by emissions of acrylic acid and formaldehyde from sources at the facility that were not included in the Wet-Formed Fiberglass Production source category (non-MACT sources).

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and also at populations living within 50 km of the facilities, and we found that no one is exposed to a cancer risk at or above 1-in-1 million, or to a chronic noncancer TOSHI greater than 1. The methodology and the results of the demographic analysis are presented in a technical report titled, *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Wet-Formed Fiberglass Mat Production,* which is available in the docket for this action.

We weighed all health risk factors in our risk acceptability determination, and we proposed that the residual risks from this source category are acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health, and whether more stringent standards were necessary to prevent an adverse environmental effect, by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provide an ample margin of safety to protect public health, we examined the same risk factors that we investigated for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. We proposed that the 2002 Wet-Formed Fiberglass Mat Production NESHAP requirements provide an ample margin of safety to protect public health. Based on the results of our environmental risk screening assessment, we also proposed that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the Wet-Formed Fiberglass Mat Production source category?

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed.

3. What key comments did we receive on the risk review, and what are our responses?

We received comments in support of and against the proposed risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Comments that were not supportive of the risk review were considered at length. After review of these comments, we determined that no changes needed to be made to the underlying risk assessment methodology. The comments and our specific responses can be found in the document titled ''Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,'' which is available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all of the comments on the EPA's risk review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we proposed that the risks from the Wet-Formed Fiberglass Mat Production source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our risk review as proposed.

B. Technology Review for the Wet-Formed Fiberglass Mat Production Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Wet-Formed Fiberglass Mat Production source category?

Pursuant to CAA section 112(d)(6), we conducted a technology review, which focused on identifying and evaluating developments in practices, processes, and control technologies for control of formaldehyde emissions from drying and curing ovens at wet-formed fiberglass mat production facilities. No cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. More information concerning our technology review is in the memorandum titled, *Section 112(d)(6) Technology Review for Wet-Formed Fiberglass Mat Production,* which is in the docket for this action, and in the preamble to the proposed rule (83 FR 14984).

2. How did the technology review change for the Wet-Formed Fiberglass Mat Production source category?

The technology review has not changed since proposal.

3. What key comments did we receive on the technology review, and what are our responses?

We received comments in support of the proposed determination from the technology review that no revisions were warranted under CAA section 112(d)(6). We also received one comment that asserted that cost effectiveness should not be a consideration when examining standards under CAA section 112(d)(6). We evaluated the comments and determined that no changes regarding our determination were needed. These comments and our specific responses can be found in the comment summary and response document titled ''Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,'' which is available in the docket for this action.

4. What is the rationale for our final approach for the technology review?

We evaluated all of the comments on the EPA's technology review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we determined that no cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. More information concerning our technology review, and how we evaluate cost effectiveness, can be found in the memorandum titled *Section 112(d)(6) Technology Review for Wet-Formed Fiberglass Mat Production,* which is in the docket for this action, and in the preamble to the proposed rule (83 FR 14984). Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology review as proposed.

C. Startup, Shutdown, and Malfunction for the Wet-Formed Fiberglass Mat Production Source Category

1. What did we propose for the Wet-Formed Fiberglass Mat Production source category?

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (83 FR 14984).

2. How did the SSM provisions change for the Wet-Formed Fiberglass Mat Production source category?

Since proposal, the SSM provisions have not changed, with the following exceptions. We have corrected a publication error in the proposed regulatory text for 40 CFR 63.3000(c)(5), as discussed in section III.C.7 of this preamble. We have also clarified the proposed definitions for ''startup'' and ''shutdown'' in the final rule to address a comment received that requested use of consistent terminology to refer to the material being processed, and for periods of shutdown, by associating it with the maximum residence time required for the curing and drying of mat in an oven and specifying the formula for calculation of maximum residence time. We have revised the definitions of ''Shutdown'' and ''Startup'' to read as set out in the regulatory text at the end of this document.

We have also added a definition for ''maximum residence time,'' which reflects the longest duration that binder-infused fiberglass mat would remain in the drying and curing oven and is determined based on the length of the drying and curing oven and the slowest line speed for the normal operation of an oven. The definition specifies a formula for the calculation of the maximum residence time as shown in the regulatory text at the end of this document.

3. What key comments did we receive on the SSM provisions, and what are our responses?

Comment: Although we did not propose standards for periods of malfunction, one commenter initially proposed that the Agency should promulgate work practice standards for malfunction events to address HAP emissions from binder-infused fiberglass mat that would remain in the oven during such events. In follow-up discussions of the potential implementation of the requested work practice standard with the EPA, the commenter requested that the EPA instead consider modifying the definition of ''shutdown.'' [2] The commenter asserted that the proposed definition of ''shutdown'' could be construed such that a shutdown period may continue for a period long after

[2] See letter from Reed B. Hitchcock, Asphalt Roofers Manufacturing Association to Susan Fairchild (EPA), ''Re: Risk and Technology Review, Wet-Formed Fiberglass Mat Production, 40 CFR part 63, subpart HHHH; Docket No. EPA–HQ–OAR–2004–0309; Proposed Modification to Definition of Shutdown,'' September 21, 2018, in the docket for this action.

binder-infused fiberglass mat has dried and emissions of organic HAP have ceased. According to the commenter, this would result in the potential for ''indefinite deviations.'' As an example, the commenter provided that a power failure could result in the prevention of mat leaving the oven even after the mat was cured and dried. The commenter further explained that wet-formed fiberglass mat lines operate at high speeds with relatively short residence times in the drying and curing oven (ranging from less than 10 seconds to less than 1 minute), during which the mat is completely dried and cured. Air pollution control devices are operated during shutdown, and all emissions from the curing and drying ovens are routed to these devices. The commenter requested that the EPA amend the final definition of ''shutdown'' to clarify that shutdown ends after mat ceases to enter the oven and following the elapse of the residence time. The requested amendments would account for the time period until the mat is completely cured and emissions from the binder-infused fiberglass mat are no longer occurring. The commenter also recommended that the EPA consider a definition for ''maximum residence time'' to clarify how facilities could calculate the maximum residence time for each drying and curing oven. The commenter also requested that the EPA revise the proposed definitions of ''startup'' and ''shutdown'' to use consistent terminology to refer to the material being processed. The commenter specifically requested that the EPA's proposed definition of ''shutdown'' be revised to replace the phrase ''any resin infused binder'' at the end of the definition with ''any binder-infused fiberglass mat.''

Response: We are finalizing the commenter's suggestions for clarification of the definitions of ''startup'' and ''shutdown,'' and the requested definition for ''maximum residence time.'' The EPA also agrees with commenters that the initially requested work practice standards are not appropriate for wet-formed fiberglass mat production operations, and consistent with proposal, is not finalizing any standards for malfunctions. We concur with the commenter's assessment that the binder-infused fiberglass mat entering the oven is cured over a relatively quick period (that may range from less than 10 seconds to less than 1 minute) and that this period of time (the ''residence time'') should be taken into account when determining the cessation of the operation period; for shutdown to complete, the binder infused fiberglass mat must enter and remain in the oven for the duration of the maximum residence time. When the maximum residence time is completed, no further emissions of HAP occur as a result of the wet-formed fiberglass mat manufacturing process. We are finalizing these suggested changes accordingly. We are finalizing provisions that the maximum residence time should be established as the longest time period (in seconds), during normal operation, that a particular point on the fiberglass mat remains in the oven, as determined by the length of the drying and curing oven (in feet), and the slowest line speed during normal operation (in feet per second), excluding periods of ramping up to speed during startup. This maximum residence time may then be used to determine the time of shutdown. See sections III.C and IV.C.2 of this preamble for additional information on the final definitions for ''startup,'' ''shutdown,'' and ''maximum residence time'' and determining the maximum residence time. We have also revised 40 CFR 63.2998 to include a requirement that facilities must maintain records that show how the maximum residence time was derived for each production line.

Additional comments on the SSM provisions and our specific responses to those comments can be found in the document titled *Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,* which is available in the docket for this action.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (83 FR 14984) and in section III.C of this preamble, we determined that these amendments remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. Therefore, we are finalizing the amendments to remove and revise provisions related to SSM, as proposed, with the exception of clarifications to the definitions to ''startup'' and ''shutdown,'' and the addition of a final definition for ''maximum residence time,'' as discussed in this section.

D. Other Revisions To Monitoring, Performance Testing, and Reporting Requirements for the Wet-Formed Fiberglass Mat Production Source Category

1. What did we propose for the Wet-Formed Fiberglass Mat Production source category?

We proposed several revisions to the rule's monitoring, recordkeeping, and reporting requirements, including revisions to the frequency of submittal of compliance reports, revisions to remove the requirement for parametric monitoring for drying and curing ovens where only a non-HAP binder is used, and technical and editorial revisions.

We proposed to revise the frequency of submittal of compliance reports when deviations from applicable standards occur. Currently, 40 CFR 63.3000(c) requires owners and operators of wet-formed fiberglass mat production facilities to submit compliance reports on a semiannual basis unless there are deviations from emission limits or operating limits. In those instances, the rule required that compliance reports be submitted on a quarterly basis. We proposed to revise 40 CFR 63.3000(c) to require that compliance reports be submitted on a semiannual basis in all instances.

We proposed revisions to 40 CFR 63.2984, 63.2996, and 63.2998 to revise requirements for owners and operators to monitor and record the parameters listed in Table 1 to 40 CFR part 63, subpart HHHH, during periods when a non-HAP binder is being used. We proposed that during periods when the binder formulation being used to produce mat does not contain any HAP (*i.e.,* formaldehyde or any other HAP listed under section 112(b) of the CAA), in lieu of monitoring or recording the parameters listed in Table 1 to 40 CFR part 63, subpart HHHH, owners and operators would be required to record the dates and times that production of mat using a non-HAP binder began and ended. We proposed harmonizing revisions to Table 1 to 40 CFR part 63, subpart HHHH, and a definition of ''Non-HAP binder'' to be added to 40 CFR 63.3004 to clearly identify periods when the binder formulation being used to produce mat does not contain any HAP. We also solicited comments on revising 40 CFR 63.2991 to exempt performance testing requirements for drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders.

We proposed several technical and editorial revisions to 40 CFR 63.2984, 63.2993, and 63.2999. We also removed

and reserved 40 CFR 63.3003. The proposed revisions included clarifying references, updates to acceptable reference methods that we are incorporating by reference, updates to clarify the format of records, and revisions for consistency with updates to the IBR in 40 CFR 63.14.

2. How did the revisions and corrections to monitoring, performance testing, and reporting requirements change for the Wet-Formed Fiberglass Mat Production source category?

Consistent with our proposal, we are revising the frequency of submittal of compliance reports when deviations from applicable standards occur from quarterly to semiannually. We are, however, promulgating these revisions with minor changes such as clarifying 40 CFR 63.3000(c)(1) to indicate the date when the transition to semiannual reporting should begin. We are also correcting a typographical error in the proposed introductory sentence of 40 CFR 63.3000(c)(6).

We are revising 40 CFR 63.2984, 63.2996, 63.2998, 63.3004 (definition of ''Non-HAP binder''), and Table 1 to 40 CFR part 63, subpart HHHH, to revise requirements for owners and operators to monitor and record the parameters listed in Table 1 to 40 CFR part 63, subpart HHHH, during periods when a non-HAP binder is being used, with minor revisions. We are revising Table 1 to 40 CFR part 63, subpart HHHH, to apply footnote ''4'' to line 1 (''Thermal oxidizer temperature'') and to line 2 (''Other process or control device parameters in your OMM plan''). Finally, we have revised the definition of ''Non-HAP binder'' from proposal to clarify that the binder must meet the OSHA Hazard Communication Standard, at 29 CFR 1910.1200(b), criteria for disclosing composition or ingredients in Section 3 of SDSs, except when identifying information is withheld. In such cases, an affected source may not rely on an SDS for a non-HAP binder where the manufacturer has withheld the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture from Section 3 of the SDS. Additionally, an affected source may not withhold this information when making the case that a binder used is a non-HAP binder.

Since proposal, the technical and editorial revisions to 40 CFR 63.2984, 63.2993, 63.2999, and 63.3003 have not changed. We are, however, making minor revisions such as grammatical corrections or clarifications. For example, we are finalizing minor grammatical edits (such as converting passive voice to active voice) and clarifications that do not change the substantive content of the existing text. These changes are not based on comments on the proposed rule, but rather include minor edits to 40 CFR 63.2987(a), 63.2989(a), 63.2991(a), 63.2992(e), 63.2994(a)(2), 63.2996(a), 63.2997(a) and (b), 63.2998(c) and (g), 63.2999(c), and 63.3000(e) through (g). Based on comments to the proposed rule, we have also identified and implemented several additional technical and editorial revisions, as discussed in section IV.D.3 of this preamble.

3. What key comments did we receive on the proposed revisions to monitoring, performance testing, and reporting requirements for the Wet-Formed Fiberglass Mat Production source category, and what are our responses?

a. Frequency of Compliance Reporting

Comment: One commenter supported reducing the reporting frequency from quarterly to semiannually. This commenter requested that the EPA clarify 40 CFR 63.3000(c)(1) to indicate when the transition to semiannual reporting should begin. The commenter also noted that the EPA should correct a typographical error in the introductory paragraph of 40 CFR 63.3000(c)(6) from ''paragraphs (c)(5)(i) through (ix) of this section'' to ''paragraphs (c)(6)(i) through (ix) of this section.''

Response: We have clarified 40 CFR 63.3000(c)(1) by adding text stating that if you deviate from the emission limits in 40 CFR 63.2983 or the operating limits in 40 CFR 63.2984 in the quarter prior to February 28, 2019, you must include this information in the report for the first full semiannual reporting period following February 28, 2019. We also acknowledge the commenter's suggested correction to the introductory sentence of 40 CFR 63.3000(c)(6) and have revised this text as recommended.

b. Requirements for Facilities Using Non-HAP Binders

Comment: One commenter supported the proposed changes reducing unnecessary regulatory burdens when non-HAP binders are in use. This commenter supported the EPA's proposal to exempt drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders from performance testing requirements. The commenter suggested that the EPA could limit the scope of 40 CFR 63.2981(a) to exclude such (non-HAP) ovens from applicability under this section of the rule. The commenter also stated that the EPA should revise Table 1 to 40 CFR part 63, subpart HHHH, to apply footnote ''d'' to line 1 (''Thermal oxidizer temperature'') and to line 2 (''Other process or control device parameters in your OMM plan'') in order to make effective the EPA's intent not to require monitoring or recordkeeping for periods when binders containing no HAP were in use.

Response: We acknowledge the commenter's support for the exemption from performance testing requirements for drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders. We did not receive any comments objecting to this change and are finalizing changes to the 40 CFR 63.2991 introductory text to exclude drying and curing ovens using exclusively non-HAP binders. The EPA is not accepting the suggested text changes to 40 CFR 63.2981(a) recommended by the commenter because facilities that use exclusively non-HAP binders may still be subject to 40 CFR part 63, subpart HHHH, if they are collocated with a major source. However, such facilities would not be required to conduct performance testing and would only be subject to recordkeeping and reporting requirements. We also acknowledge the commenter's suggested revisions to Table 1 to 40 CFR part 63, subpart HHHH, and we have made these edits, including minor clarifications to footnote ''d'' (new footnote ''4'') in the final rule.

Comment: One commenter requested that the EPA revise the new definition of the term ''non-HAP binder'' to refer to the SDS, the term used in the current OSHA Hazard Communication Standard, 29 CFR 1910.1200(b). This same commenter further requested that the EPA tie the definition of non-HAP binder to the OSHA Hazard Communication Standard's criteria for disclosing composition or ingredients in Section 3 of SDSs.

Response: We acknowledge the commenter's suggested revisions and have clarified the definition of ''Non-HAP binder'' as provided by the commenter. We have further revised this definition to clarify that the affected source may not rely on the SDS for a non-HAP binder where the manufacturer has withheld the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture from

Section 3 of the SDS, or withheld this information, when making the case that a binder used is a non-HAP binder. The definition of ''Non-HAP binder'' has been revised as set out in the regulatory text at the end of this document.

c. Miscellaneous Corrections or Clarifications Recommended by Commenters

Comment: One commenter requested that the EPA revise 40 CFR 63.2985(a) and (b) to specify when the compliance dates for the SSM requirements, the electronic reporting requirements, and all other requirements take effect.

Response: The EPA agrees with the commenter and has clarified 40 CFR 63.2985 of the final rule to specify when the compliance dates for new provisions apply. Specific compliance dates for individual provisions are included in 40 CFR 63.2986, 63.2998, 63.3000, 40 CFR 63.3004, and Table 2 to 40 CFR part 63, subpart HHHH. In general, we are providing for 180 days for existing sources to comply with the revised rule requirements. We are also finalizing proposed changes to 40 CFR 63.2985(d) that require new or reconstructed drying and curing ovens that commenced operation between the date of the proposal and the date of the final rule to comply on the effective date of the final rule or startup (whichever is later).

Comment: One commenter suggested that the EPA remove the definition of ''binder application vacuum exhaust'' from 40 CFR 63.3004, as this term is not used in the standard as proposed.

Response: The EPA agrees with the commenter that the definition for ''binder application vacuum exhaust'' is no longer relevant for the subpart and has removed the definition from the final rule.

Comment: One commenter requested that the EPA revise Table 2 to 40 CFR part 63, subpart HHHH, to clarify that only 40 CFR 63.14(b)(2) and (3) apply to subpart HHHH, rather than all of 40 CFR 63.14.

Response: The EPA agrees with the commenter's recommended revision to Table 2 to 40 CFR part 63, subpart HHHH, and has revised the table entry for ''§ 63.14'' accordingly.

Additional comments on the revisions to the monitoring, recordkeeping, and reportng provisions and our specific responses to those comments can be found in the comment summary and response document titled *Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,* which is available in the docket for this action.

4. What is the rationale for our final approach for the revisions to monitoring, performance testing, and reporting requirements?

We evaluated all of the comments on the EPA's proposed amendments to the monitoring, recordkeeping, and reporting provisions for this subpart, and the proposed technical and editorial corrections. These comments were generally supportive, and requested only minor clarifications and corrections to the proposed text. We are finalizing these amendments as proposed, with the exception of the minor changes discussed in this section.

Additionally, we solicited comments on revising 40 CFR 63.2991 to exempt drying and curing ovens that are subject to a federally enforceable permit requiring the use of only non-HAP binders from performance testing requirements. We received only supportive comments on this potential change. We are, therefore, promulgating changes to the 40 CFR 63.2991 introductory text to exclude drying and curing ovens using exclusively non-HAP binders from meeting the requirements of this section. Facilities that use a combination of HAP and non-HAP binders would continue to be required to conduct performance tests as currently required under the subpart.

E. Requirements for Submission of Performance Tests for the Wet-Formed Fiberglass Mat Production Source Category

1. What did we propose for the Wet-Formed Fiberglass Mat Production source category?

We proposed amendments that would require owners and operators of wet-formed fiberglass mat drying and curing ovens to submit electronic copies of certain required performance test reports. More information concerning these proposed revisions is in the preamble to the proposed rule (83 FR 14984).

2. How did the requirements for submission of performance tests change for the Wet-Formed Fiberglass Mat Production source category?

Since proposal, the requirement for owners and operators of wet-formed fiberglass mat drying and curing ovens to submit electronic copies of certain required performance test reports has not changed. The EPA is requiring owners and operators of wet-formed fiberglass mat production facilities to submit electronic copies of certain required performance test reports through the EPA's CDX using CEDRI. The final rule requires that performance test results be submitted using the ERT.

The electronic submittal of the reports addressed in this rulemaking will increase the usefulness of the data contained in those reports; is in keeping with current trends in data availability and transparency; will further assist in the protection of public health and the environment; will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements, and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance; and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes; thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors; and providing data quickly and accurately to the affected facilities, air agencies, the EPA and the public. For a more thorough discussion of electronic reporting, see the memorandum titled *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* which is available in Docket ID No. EPA–HQ–OAR–2004–0309.

3. What key comments did we receive on submission of performance tests, and what are our responses?

We received comments in support of and against the proposed requirement for owners and operators to submit electronic copies of performance test reports. Generally, the comments that were not supportive of the proposed requirements to submit performance tests electronically expressed concern that the requirements could require duplicative or burdensome reporting, or expressed concerns regarding delayed reporting requirements for sources to take in cases of events that may cause a delay in reporting. After review of these comments, we determined that no changes are necessary. The comments and our specific responses can be found in the document titled *Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,* which is available in the docket for this action.

A commenter requested that the EPA clarify the written notification of delayed reporting requirement in the proposed amendment to 40 CFR 63.3000(f). In response to this request, the EPA has revised the language in 40 CFR 63.3000(f) to state that an owner or operator must provide information on

the date(s) and time(s) either CDX or CEDRI is unavailable when a user attempts to gain access in the 5 business days prior to the submission deadline.

4. What is the rationale for our final approach for submission of performance tests?

We evaluated all of the comments on the EPA's proposed amendments requiring owners and operators of wet-formed fiberglass mat drying and curing ovens to submit electronic copies of certain required performance test reports. For the reasons explained in the proposed rule, we determined that these amendments increase the ease and efficiency of data submittal and improve data accessibility. More information concerning the proposed requirement for owners and operators of wet-formed fiberglass mat drying and curing ovens to submit electronic copies of certain required performance test reports is in the preamble to the proposed rule (83 FR 14984) and the document, *Summary of Public Comments and Responses for Wet-Formed Fiberglass Mat Production Risk and Technology Review,* which is available in the docket for this action. Therefore, we are finalizing our approach for submission of performance tests, as proposed.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

The EPA estimates that there are seven wet-formed fiberglass mat production facilities that are subject to the Wet-Formed Fiberglass Mat Production NESHAP and would be affected by these final amendments. The basis of our estimate of affected facilities is provided in the memorandum titled *Wet-Formed Fiberglass: Residual Risk Modeling File Documentation,* which is available in the docket for this action. We are not currently aware of any planned or potential new or reconstructed wet-formed fiberglass mat production facilities.

B. What are the air quality impacts?

The EPA estimates that annual HAP emissions from the seven wet-formed fiberglass mat production facilities that are subject to the NESHAP are approximately 23 tpy. Because we are not finalizing revisions to the emission limits, we do not anticipate any air quality impacts as a result of the final rule's amendments.

C. What are the cost impacts?

The seven wet-formed fiberglass mat production facilities that would be subject to the final amendments would incur minimal net costs to meet revised recordkeeping and reporting requirements, some estimated to have costs and some estimated to have cost savings. Nationwide annual net costs associated with the final requirements are estimated to be $200 per year in each of the 3 years following promulgation of amendments. This estimated total annual cost is comprised of estimated annual costs of about $1,390, which are offset by the estimated annual cost savings of about $1,190. The EPA believes that the seven wet-formed fiberglass mat production facilities which are known to be subject to the NESHAP can meet the final requirements without incurring additional capital or operational costs. Therefore, the only costs associated with the final amendments are related to recordkeeping and reporting labor costs. For further information on the requirements being finalized, see sections III and IV of this preamble. For further information on the costs and cost savings associated with the final requirements, see the memorandum titled *Cost Impacts of Wet-Formed Fiberglass Mat Production Risk and Technology Review (Final Rule),* and the document, *Supporting Statement for NESHAP for Wet-Formed Fiberglass Mat Production (Final Rule),* which are both available in the docket for this action.

D. What are the economic impacts?

As noted above, the nationwide annual costs associated with the final requirements are estimated to be approximately $200 per year in each of the 3 years following promulgation of the amendments. The present value of the total cost over these 3 years is approximately $550 in 2016 dollars under a 3-percent discount rate, and $510 in 2016 dollars under a 7-percent discount rate. These costs are not expected to result in business closures, significant price increases, or substantial profit loss.

For further information on the economic impacts associated with the requirements being promulgated, see the memorandum titled *Final Economic Impact Analysis for the Risk and Technology Review: Wet-Formed Fiberglass Mat Production Source Category,* which is available in the docket for this action.

E. What are the benefits?

Although the EPA does not anticipate reductions in HAP emissions as a result of the final amendments, we believe that the action, if finalized, would result in improvements to the rule. Specifically, the final amendment requiring electronic submittal of performance test results will increase the usefulness of the data, is in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. In addition, the final amendments reducing parameter monitoring and recording and performance testing requirements when non-HAP binder is being used to produce mat will reduce burden for regulated facilities during such periods, while continuing to protect public health and the environment. See section IV.D of this preamble for more information.

F. What analysis of environmental justice did we conduct?

As discussed in the preamble to the proposed rule, to examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Wet-Formed Fiberglass Mat Production source category across different demographic groups within the populations living near facilities. The results of this analysis indicated that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples.

The documentation for this decision is contained in section IV.A of the preamble to the proposed rule and the technical report titled *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Wet-Formed Fiberglass Mat Production,* which is available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

This action's health and risk assessments are contained in sections IV.A and B of this preamble and further documented in the risk report titled *Residual Risk Assessment for the Wet-Formed Fiberglass Mat Production Source Category in Support of the November 2018 Risk and Technology Review Final Rule,* which is available in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

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

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to OMB under the PRA. The information collection request (ICR) document that the EPA prepared has been assigned EPA ICR number 1964.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart HHHH, in the form of eliminating the SSM plan and reporting requirements; requiring electronic submittal of performance test reports; reducing the frequency of compliance reports to a semiannual basis when there are deviations from applicable standards; and reducing the parameter monitoring and recording, and performance testing requirements during use of binder containing no HAP. We also included a review of the amended rule by affected facilities in the updated ICR for this final rule. In addition, the number of facilities subject to the standards changed. The number of respondents was reduced from 14 to 7 based on consultation with industry representatives and state/local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of facilities that produce wet-formed fiberglass mat subject to 40 CFR part 63, subpart HHHH.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHH).

Estimated number of respondents: Seven.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 1,470 hours (per year). Of these, 3 hours (per year) is the incremental burden to comply with the final rule amendments. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $95,500 (per year), including $0 annualized capital or operation and maintenance costs. Of the total, $200 (per year) is the incremental cost to comply with the amendments to the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the document titled *Final Economic Impact Analysis for the Risk and Technology Review: Wet-Formed Fiberglass Mat Production Source Category,* which is available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. None of the seven wet-formed fiberglass mat production facilities that have been identified as being affected by this action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and B and sections IV.A and B of this preamble, and further documented in the risk report titled, *Residual Risk Assessment for the Wet-Formed Fiberglass Mat Production Source Category in Support of the November 2018 Risk and Technology Review Final Rule,* which is available in the docket for this action.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. The EPA has decided to use EPA Methods 1, 2, 3, 3A, 4, 316, 318, and 320 of 40 CFR part 60, appendix A. Methods 1, 2, 3, 3A, and 4 of 40 CFR part 60, appendix A, are used to determine the gas flow rate which is used with the concentration of formaldehyde to calculate the mass emission rate. While the EPA identified 11 voluntary consensus standards (VCS) as being potentially applicable as alternatives to EPA Methods 1, 2, 3, 3A, and 4 of 40 CFR part 60, the Agency is not using them. The use of these VCS would be impractical because of their

lack of equivalency, documentation, validation data, and/or other important technical and policy considerations.

Methods 316, 318, and 320 of 40 CFR part 60, appendix A, are used to determine the formaldehyde concentrations before and after the control device (*e.g.,* thermal oxidizer). The EPA conducted a search to identify potentially applicable VCS. However, the Agency identified no such standards, and none were brought to its attention in comments. Therefore, the EPA has decided to use Methods 316, 318, and 320 of 40 CFR part 60, appendix A.

Results of the search are documented in the memorandum titled, Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production, which is available in the docket for this action. Additional information can be found at *https://www.epa.gov/emc/emc-promulgated-test-methods.*

The EPA is also promulgating revisions to 40 CFR 63.2984 to allow use of a more recent edition of the currently referenced ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, *i.e.,* the appropriate chapters of ''Industrial Ventilation: A Manual of Recommended Practice for Design'' (27th edition), and revising the text regarding the existing IBR (chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice'' (23rd Edition)) by updating the reference to 40 CFR 63.14. These methods provide guidance on the capture and conveyance of formaldehyde emissions from each drying and curing oven to the thermal oxidizer. Owners and operators of wet-formed fiberglass mat production facilities may continue to use the existing reference (23rd edition), or the updated method (27th edition) may be obtained from American Conference of Governmental Industrial Hygienists (ACGIH), Customer Service Department, 1330 Kemper Meadow Drive, Cincinnati, Ohio 45240, telephone number (513) 742–2020. In addition, owners and operators may inspect a copy at U.S. EPA Library, 109 TW Alexander Drive, Research Triangle Park, North Carolina 27711, phone (919) 541–0094.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and the technical report titled *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Wet-Formed Fiberglass Mat Production,* which is available in the docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 20, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

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

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

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(2) Industrial Ventilation: A Manual of Recommended Practice, 23rd Edition, 1998, Chapter 3, ''Local Exhaust Hoods'' and Chapter 5, ''Exhaust System Design Procedure.'' IBR approved for §§ 63.1503, 63.1506(c), 63.1512(e), Table 2 to subpart RRR, Table 3 to subpart RRR, and appendix A to subpart RRR, and § 63.2984(e).

(3) Industrial Ventilation: A Manual of Recommended Practice for Design, 27th Edition, 2010. IBR approved for §§ 63.1503, 63.1506(c), 63.1512(e), Table 2 to subpart RRR, Table 3 to subpart RRR, and appendix A to subpart RRR, and § 63.2984(e).

* * * * *

Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

■ 3. Section 63.2984 is amended by revising paragraphs (a)(1) and (4), (b), and (e) to read as follows:

§ 63.2984 What operating limits must I meet?

(a) * * *

(1) You must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the temperature established during your performance test and specified in your OMM plan, except during periods when using a non-HAP binder.

* * * * *

(4) If you use an add-on control device other than a thermal oxidizer or wish to monitor an alternative parameter and comply with a different operating limit than the limit specified in paragraph (a)(1) of this section, you must obtain approval for the alternative monitoring under § 63.8(f). You must include the approved alternative monitoring and operating limits in the OMM plan specified in § 63.2987.

(b) When during a period of normal operation, you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. The corrective actions must be completed in an expeditious manner as specified in the OMM plan.

* * * * *

(e) If you use a thermal oxidizer or other control device to achieve the emission limits in § 63.2983, you must capture and convey the formaldehyde emissions from each drying and curing oven according to the procedures in Chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice'' (23rd Edition) or the appropriate chapters of ''Industrial Ventilation: A Manual of Recommended Practice for Design'' (27th Edition) (both are incorporated by reference, see § 63.14). In addition, you may use an alternate as approved by the Administrator.

■ 4. Section 63.2985 is amended by revising paragraphs (a) and (b) and (c) introductory text and adding paragraph (d) to read as follows:

§ 63.2985 When do I have to comply with these standards?

(a) Existing drying and curing ovens must be in compliance with this subpart no later than April 11, 2005, except as otherwise specified in this section and §§ 63.2986, 63.2998, 63.3000, and 63.3004 and Table 2 to this subpart.

(b) Drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 9, 2018 must be in compliance with this subpart at startup or by April 11, 2002, whichever is later, except as otherwise specified in this section and §§ 63.2986, 63.2998, 63.3000, and 63.3004 and Table 2 to this subpart.

(c) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the following apply:

* * * * *

(d) Drying and curing ovens constructed or reconstructed after April 6, 2018 must be in compliance with this subpart at startup or by February 28, 2019 whichever is later.

■ 5. Section 63.2986 is amended by revising paragraph (g) to read as follows:

§ 63.2986 How do I comply with the standards?

* * * * *

(g) You must comply with the requirements in paragraphs (g)(1) through (3) of this section.

(1) Before August 28, 2019, existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 7, 2018 must be in compliance with the emission limits in § 63.2983 and the operating limits in § 63.2984 at all times, except during periods of startup, shutdown, or malfunction. After August 27, 2019, affected sources must be in compliance with the emission limits in § 63.2983 and the operating limits in § 63.2984 at all times, including periods of startup, shutdown, or malfunction. Affected sources that commence construction or reconstruction after April 6, 2018, must comply with all requirements of the subpart, no later than February 28, 2019 or upon startup, whichever is later.

(2) Before August 28, 2019, existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 9, 2018 must always operate and maintain any affected source, including air pollution control equipment and monitoring equipment, according to the provisions in § 63.6(e)(1). After August 27, 2019, for such affected sources, and after February 28, 2019 for affected sources that commence construction or reconstruction after April 6, 2018, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if you are in compliance with the emissions limits required by this subpart. The Administrator will base the determination of whether a source is operating in compliance with operation and maintenance requirements on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(3) Before August 28, 2019, for each existing source and for each new or reconstructed source for which construction commenced after May 26, 2000 and before April 9, 2018, you must maintain your written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The startup, shutdown, and malfunction plan must address the startup, shutdown, and corrective actions taken for malfunctioning process and air pollution control equipment. A startup, shutdown, and malfunction plan is not required for such affected sources after August 27, 2019. No startup, shutdown, or malfunction plan is required for any affected source that commences construction or reconstruction after April 6, 2018.

■ 6. Section 63.2987 is amended by revising paragraph (a) introductory text and paragraph (d) to read as follows:

§ 63.2987 What must my operation, maintenance, and monitoring (OMM) plan include?

(a) You must prescribe the monitoring that will be performed to ensure compliance with these emission limitations. Table 1 to this subpart lists the minimum monitoring requirements. Your plan must specify the items listed in paragraphs (a)(1) through (3) of this section:

* * * * *

(d) Your plan must specify the recordkeeping procedures to document compliance with the emissions and operating limits. Table 1 to this subpart establishes the minimum recordkeeping requirements.

■ 7. Section 63.2989 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.2989 How do I change my OMM plan?

* * * * *

(a) To revise the ranges or levels established for your operating limits in § 63.2984, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

* * * * *

■ 8. Section 63.2991 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 63.2991 When must I conduct performance tests?

Except for drying and curing ovens subject to a federally enforceable permit that requires the exclusive use of non-HAP binders, you must conduct a performance test for each drying and curing oven subject to this subpart according to the provisions in paragraphs (a) through (c) of this section:

(a) *Initially.* You must conduct a performance test to demonstrate initial compliance and to establish operating parameter limits and ranges to be used to demonstrate continuous compliance with the emission standards no later than 180 days after the applicable compliance date specified in § 63.2985.

* * * * *

■ 9. Section 63.2992 is amended by revising paragraphs (b), (d), and (e) to read as follows:

§ 63.2992 How do I conduct a performance test?

* * * * *

(b) You must conduct the performance test according to the requirements in § 63.7(a) through (d), (e)(2) through (4), and (f) through (h).

* * * * *

(d) During the performance test, you must monitor and record the operating parameters that you will use to demonstrate continuous compliance after the test. These parameters are listed in Table 1 to this subpart.

(e) You must conduct performance tests under conditions that are representative of the performance of the affected source. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and record an explanation to support that such conditions represent normal operation. Upon request, you must make available to the

Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 10. Section 63.2993 is revised to read as follow:

§ 63.2993 What test methods must I use in conducting performance tests?

(a) Use EPA Method 1 (40 CFR part 60, appendix A–1) for selecting the sampling port location and the number of sampling ports.

(b) Use EPA Method 2 (40 CFR part 60, appendix A–1) for measuring the volumetric flow rate of the stack gas.

(c) Use EPA Method 3 or 3A (40 CFR part 60, appendix A–2) for measuring oxygen and carbon dioxide concentrations needed to correct formaldehyde concentration measurements to a standard basis.

(d) Use EPA Method 4 (40 CFR part 60, appendix A–3) for measuring the moisture content of the stack gas.

(e) Use EPA Method 316, 318, or 320 (40 CFR part 63, appendix A) for measuring the concentration of formaldehyde.

(f) Use the method contained in appendix A to this subpart or the resin purchase specification and the vendor specification sheet for each resin lot for determining the free-formaldehyde content in the urea-formaldehyde resin.

(g) Use the method in appendix B to this subpart for determining product loss-on-ignition.

■ 11. Section 63.2994 is amended by revising paragraph (a) to read as follows:

§ 63.2994 How do I verify the performance of monitoring equipment?

(a) Before conducting the performance test, you must take the steps listed in paragraphs (a)(1) through (3) of this section:

(1) Install and calibrate all process equipment, control devices, and monitoring equipment.

(2) Develop and implement a continuous parameter monitoring system (CPMS) quality control program that includes written procedures for CPMS according to § 63.8(d)(1) and (2). You must keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this subpart, to be made available for inspection, upon request, by the Administrator. If you revise the performance evaluation plan, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. You should include the program of corrective action in the plan required under § 63.8(d)(2).

(3) Conduct a performance evaluation of the CPMS according to § 63.8(e) which specifies the general requirements and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

* * * * *

■ 12. Section 63.2996 is revised to read as follows:

§ 63.2996 What must I monitor?

(a) You must monitor the parameters listed in Table 1 to this subpart and any other parameters specified in your OMM plan. You must monitor the parameters, at a minimum, at the corresponding frequencies listed in Table 1 to this subpart, except as specified in paragraph (b) of this section.

(b) During periods when using a non-HAP binder, you are not required to monitor the parameters in Table 1 to this subpart.

■ 13. Section 63.2997 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 63.2997 What are the requirements for monitoring devices?

(a) If you control formaldehyde emissions using a thermal oxidizer, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) If you use process modifications or a control device other than a thermal oxidizer to control formaldehyde emissions, you must install, calibrate, maintain, and operate devices to monitor the parameters established in your OMM plan at the frequency established in the plan.

■ 14. Section 63.2998 is amended by:

■ a. Revising the introductory text, paragraphs (a) and (c), (e) introductory text, and (f);

■ b. Redesignating paragraph (g) as paragraph (h); and

■ c. Adding paragraphs (g) and (i).

The revisions and additions read as follows:

§ 63.2998 What records must I maintain?

You must maintain records according to the procedures of § 63.10. You must maintain the records listed in paragraphs (a) through (i) of this section.

(a) All records required by § 63.10, where applicable. Table 2 of this subpart presents the applicable requirements of the general provisions.

* * * * *

(c) During periods when the binder formulation being applied contains HAP, records of values of monitored parameters listed in Table 1 to this subpart to show continuous compliance with each operating limit specified in Table 1 to this subpart. If you do not monitor the parameters in Table 1 to this subpart during periods when using non-HAP binder, you must record the dates and times that production of mat using non-HAP binder began and ended.

* * * * *

(e) Before August 28, 2019, for existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 7, 2018, if an operating parameter deviation occurs, you must record:

* * * * *

(f) Before August 28, 2019, for existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 7, 2018, keep all records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. Records specified in § 63.6(e)(3)(iii) through (v) are not required to be kept after August 27, 2019 for existing or new drying and curing ovens.

(g) After February 28, 2019 for affected sources that commence construction or reconstruction after April 6, 2018, and after August 27, 2019 for all other affected sources, in the event that an affected source fails to meet an applicable standard, including deviations from an emission limit in § 63.2983 or an operating limit in § 63.2984, you must record the number of failures and, for each failure, you must:

(1) Record the date, time, and duration of the failure;

(2) Describe the cause of the failure;

(3) Record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions; and

(4) Record actions taken to minimize emissions in accordance with § 63.2986(g)(2) and any corrective actions taken to return the affected unit to its normal or usual manner of operation and/or to return the operating parameter to the limit or to within the range specified in the OMM plan, and the dates and times at which corrective actions were initiated and completed.

* * * * *

(i) Records showing how the maximum residence time was derived.

■ 15. Section 63.2999 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 63.2999 In what form and for how long must I maintain records?

* * * * *

(b) Your records must be readily available and in a form so they can be easily inspected and reviewed. You can keep the records on paper or an alternative medium, such as microfilm, computer, computer disks, compact disk, digital versatile disk, flash drive, other commonly used electronic storage medium, magnetic tape, or on microfiche.

(c) You may maintain any records that you submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an onsite compliance evaluation.

■ 16. Section 63.3000 is amended by:

■ a. Revising paragraphs (c) introductory text, (c)(1) and (4), (c)(5) introductory text, and (c)(5)(viii) and (ix);

■ b. Adding paragraph (c)(6);

■ c. Redesignating paragraph (d) and (e) as paragraph (e) and (d), respectively, and revising newly redesignated paragraphs (e) and (d); and

■ e. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

§ 63.3000 What notifications and reports must I submit?

* * * * *

(c) *Semiannual compliance reports.* You must submit semiannual compliance reports according to the requirements of paragraphs (c)(1) through (6) of this section.

(1) *Dates for submitting reports.* Unless the Administrator has agreed to a different schedule for submitting reports under § 63.10(a), you must deliver or postmark each semiannual compliance report no later than 30 days following the end of each semiannual reporting period. The first semiannual reporting period begins on the compliance date for your affected source and ends on June 30 or December 31, whichever date immediately follows your compliance date. Each subsequent semiannual reporting period for which you must submit a semiannual compliance report begins on July 1 or January 1 and ends 6 calendar months later. Before March 1, 2019, as required by § 63.10(e)(3), you must begin submitting quarterly compliance reports if you deviate from the emission limits in § 63.2983 or the operating limits in § 63.2984. After February 28, 2019, you are not required to submit quarterly compliance reports. If you deviate from the emission limits in § 63.2983 or the operating limits in § 63.2984 in the quarter prior to February 28, 2019, you must include this information in the report for the first full semiannual reporting period following February 28, 2019.

* * * * *

(4) *No deviations.* If there were no instances where an affected source failed to meet an applicable standard, including no deviations from the emission limit in § 63.2983 or the operating limits in § 63.2984, the semiannual compliance report must include a statement to that effect. If there were no periods during which the continuous parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement to that effect.

(5) *Deviations.* Before August 28, 2019, for existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 7, 2018, if there was a deviation from the emission limit in § 63.2983 or an operating limit in § 63.2984, the semiannual compliance report must contain the information in paragraphs (c)(5)(i) through (ix) of this section:

* * * * *

(viii) A brief description of the associated process units.

(ix) A brief description of the associated continuous parameter monitoring system.

(6) *Deviations.* For affected sources that commence construction or reconstruction after April 6, 2018, after February 28, 2019, and after August 27, 2019 for all other affected sources, if there was an instance where an affected source failed to meet an applicable standard, including a deviation from the emission limit in § 63.2983 or an operating limit in § 63.2984, the semiannual compliance report must record the number of failures and contain the information in paragraphs (c)(6)(i) through (ix) of this section:

(i) The date, time, and duration of each failure.

(ii) The date and time that each continuous parameter monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous parameter monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) A list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(v) The date and time that corrective actions were taken, a description of the cause of the failure (including unknown cause, if applicable), and a description of the corrective actions taken.

(vi) A summary of the total duration of each failure during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(vii) A breakdown of the total duration of the failures during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

(viii) A brief description of the associated process units.

(ix) A brief description of the associated continuous parameter monitoring system.

(d) *Startup, shutdown, malfunction reports.* Before August 28, 2019, for existing drying and curing ovens and drying and curing ovens constructed or reconstructed after May 26, 2000 and before April 7, 2018, if you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified § 63.10(d)(5). No startup, shutdown, or malfunction plan is required for any affected source that commences construction or reconstruction after April 6, 2018.

(e) *Performance test results.* You must submit results of each performance test (as defined in § 63.2) required by this subpart no later than 60 days after completing the test as specified in § 63.10(d)(2). You must include the values measured during the performance test for the parameters listed in Table 1 of this subpart and the operating limits or ranges that you will include in your OMM plan. For the thermal oxidizer temperature, you must include 15-minute averages and the average for the three 1-hour test runs. For affected sources that commence construction or reconstruction after April 6, 2018, beginning February 28, 2019, and beginning no later than August 27, 2019 for all other affected sources, you must submit the results following the procedures specified in paragraphs (e)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as

listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via CEDRI (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*)). You must submit performance test data in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13, unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information you are submitting under paragraph (e)(1) is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disk, flash drive or other commonly used electronic storage medium to the EPA. You must clearly mark the electronic medium as CBI and mail to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, Mail Drop C404–02, 4930 Old Page Rd., Durham, NC 27703. You must submit the same ERT or alternate file with the CBI omitted to the EPA via the EPA's CDX as described in paragraph (e)(1) of this section.

(f) *Claims of EPA system outage.* If you are required to electronically submit a report through the CEDRI in the EPA's CDX, you may assert a claim of EPA outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (f)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required test report within the time prescribed due to an outage of either the EPA's CEDRI or CDX Systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(g) *Claims of force majeure.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirements to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 17. Section 63.3001 is revised to read as follows:

§ 63.3001 What sections of the general provisions apply to me?

You must comply with the requirements of the general provisions of 40 CFR part 63, subpart A, as specified in Table 2 of this subpart.

§ 63.3003 [Removed and Reserved]

■ 18. Section 63.3003 is removed and reserved.

■ 19. Section 63.3004 is amended by:

■ a. Removing the definition for ''Binder application vacuum exhaust''.

■ b. Revising the definition for ''Deviation''; and

■ c. Adding definitions for ''Maximum residence time'', ''Non-HAP binder'', ''Shutdown'', and ''Startup'' in alphabetical order.

The revisions and additions read as follows:

§ 63.3004 What definitions apply to this subpart?

* * * * *

Deviation means:

(1) Before August 28, 2019, any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit, or work practice standard;

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(iii) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

(2) After February 28, 2019 for affected sources that commence construction or reconstruction after April 6, 2018, and after August 27, 2019 for all other affected sources, any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limit, operating limit, or work practice standard; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Maximum residence time means the longest time, during normal operation and excluding periods of ramping up to speed during startup, that a particular point on the fiberglass mat remains in the drying and curing oven. It is determined for each line by the equation:

$$T = L/S$$

Where:

T is the residence time, in seconds;

L is the length of the drying and curing oven, in feet; and

S is the slowest line speed normally operated on the line, excluding periods of ramping up to speed during startup, in feet per second.

Non-HAP binder means a binder formulation that does not contain any substance that is required to be listed in Section 3 of a safety data sheet (SDS) pursuant to 29 CFR 1910.1200(g) and that is a HAP as defined in section 112(b) of the Clean Air Act. In designating a non-HAP binder under this subpart, you may not rely on the SDS for a binder where the manufacturer has withheld the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, or the exact percentage (concentration) of the substance in a mixture from Section 3 of the SDS. You may not withhold this information when making the case that the binder is a non-HAP binder for the purposes of § 63.2996.

* * * * *

Shutdown after February 28, 2019 for affected sources that commence construction or reconstruction after April 6, 2018, and after August 27, 2019 for all other affected sources, means the cessation of operation of the drying and curing of any binder-infused fiberglass mat for any purpose. Shutdown ends when the maximum residence time has elapsed after binder-infused fiberglass mat ceases to enter the drying and curing oven.

Startup after February 28, 2019 for affected sources that commence construction or reconstruction after April 6, 2018, and after August 27, 2019 for all other affected sources, means the setting in operation of the drying and curing of binder-infused fiberglass mat for any purpose. Startup begins when binder-infused fiberglass mat enters the oven to be dried and cured for the first time or after a shutdown event.

* * * * *

■ 20. Table 1 to subpart HHHH of part 63 is revised to read as follows:

TABLE 1 TO SUBPART HHHH OF PART 63—MINIMUM REQUIREMENTS FOR MONITORING AND RECORDKEEPING

As stated in § 63.2998(c), you must comply with the minimum requirements for monitoring and recordkeeping in the following table:

You must monitor these parameters:	At this frequency:	And record for the monitored parameter:
1. Thermal oxidizer temperature [1] [4]	Continuously	15-minute and 3-hour block averages.
2. Other process or control device parameters specified in your OMM plan [2] [4].	As specified in your OMM plan	As specified in your OMM plan.
3. Urea-formaldehyde resin solids application rate [4].	On each operating day, calculate the average lb/h application rate for each product manufactured during that day.	The average lb/h value for each product manufactured during the day.
4. Resin free-formaldehyde content [4]	For each lot of resin purchased	The value for each lot used during the operating day.
5. Loss-on-ignition [3] [4]	Measured at least once per day, for each product manufactured during that day.	The value for each product manufactured during the operating day.
6. UF-to-latex ratio in the binder [3] [4]	For each batch of binder prepared the operating day.	The value for each batch of binder prepared during the operating day.
7. Weight of the final mat product per square (lb/roofing square) [3] [4].	Each product manufactured during the operating day.	The value for each product manufactured during the operating day.
8. Average nonwoven wet-formed fiberglass mat production rate (roofing square/h) [3] [4].	For each product manufactured during the operating day.	The average value for each product manufactured during operating day.

[1] Required if a thermal oxidizer is used to control formaldehyde emissions.

[2] Required if process modifications or a control device other than a thermal oxidizer is used to control formaldehyde emissions.

[3] These parameters must be monitored and values recorded, but no operating limits apply.

[4] You are not required to monitor or record these parameters during periods when using a non-HAP binder. If you do not monitor these parameters during periods when using a non-HAP binder, you must record the dates and times that production of mat using the non-HAP binder began and ended.

■ 21. Table 2 to subpart HHHH of part 63 is revised to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)–(8)		Yes.	

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.1(a)(9)		No	[Reserved].
§ 63.1(a)(10)–(14)		Yes.	
§ 63.1(b)	Initial Applicability Determination	Yes.	
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)		Yes	Some plants may be area sources.
§ 63.1(c)(3)		No	[Reserved].
§ 63.1(c)(4)–(5)		Yes.	
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions in § 63.3004.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(3)	Prohibited Activities	Yes.	
§ 63.4(a)(4)		No	[Reserved].
§ 63.4(a)(5)		Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)	Existing/Constructed/Reconstruction	Yes.	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(5)	New and Reconstructed Sources–Dates.	Yes.	
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes.	
§ 63.6(c)(1)–(2)	Existing Sources Dates	Yes	§ 63.2985 specifies dates.
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes.	
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	See § 63.2986(g) for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions As Soon As Possible.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Yes	§§ 63.2984 and 63.2987 specify additional requirements.
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	SSM Plan Requirements	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.6(f)(1)	SSM Exemption	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.6(f)(2) and (3)	Compliance with Non–Opacity Emission Standards.	Yes.	
§ 63.6(g)	Alternative Non–Opacity Emission Standard.	Yes	EPA retains approval authority.

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Exemption from Compliance	Yes.	
§ 63.7(a)	Performance Test Requirements—Applicability and Dates.	Yes.	
§ 63.7(b)	Notification of Performance Test	Yes.	
§ 63.7(c)	Quality Assurance Program/Test Plan.	Yes.	
§ 63.7(d)	Testing Facilities	Yes.	
§ 63.7(e)(1)	Performance Testing	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	See § 63.2992(c).
§ 63.7(e)(2)–(4)	Conduct of Tests	Yes	§§ 63.2991–63.2994 specify additional requirements.
§ 63.7(f)	Alternative Test Method	Yes	EPA retains approval authority
§ 63.7(g)	Data Analysis	Yes.	
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability.	Yes.	
§ 63.8(a)(3)		No	[Reserved].
§ 63.8(a)(4)		Yes.	
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.8(c)(1)(ii)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes.	
§ 63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.8(c)(2)–(4)		Yes.	
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Procedures.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.8(c)(6)–(8)		Yes.	
§ 63.8(d)(1) and (2)	Quality Control	Yes.	
§ 63.8(d)(3)	Written Procedures for CMS	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	See § 63.2994(a).
§ 63.8(e)	CMS Performance Evaluation	Yes.	
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	EPA retains approval authority.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart HHHH does not require the use of continuous emissions monitoring systems (CEMS).
§ 63.8(g)(1)	Data Reduction	Yes.	
§ 63.8(g)(2)	Data Reduction	No	Subpart HHHH does not require the use of CEMS or COMS.
§ 63.8(g)(3)–(5)	Data Reduction	Yes.	
§ 63.9(a)	Notification Requirements—Applicability.	Yes.	
§ 63.9(b)	Initial Notifications	Yes.	
§ 63.9(c)	Request for Compliance Extension	Yes.	

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes.	
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS Notifications	Yes.	
§ 63.9(g)(2)–(3)		No	Subpart HHHH does not require the use of COMS or CEMS.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	§ 63.3000(b) specifies additional requirements.
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)		Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	§ 63.2998 includes additional requirements.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet a Standard.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	See § 63.2998(g) for recordkeeping requirements for an affected source that fails to meet an applicable standard.
§ 63.10(b)(2)(iii)	Maintenance Records	Yes.	
§ 63.10(b)(2)(iv) and (v)	Actions Taken to Minimize Emissions During SSM.	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.10(b)(2)(vi)	Recordkeeping for CMS Malfunctions	Yes.	
§ 63.10(b)(2)(vii)–(xiv)	Other CMS Requirements	Yes.	
§ 63.10(b)(3)	Recordkeeping requirement for applicability determinations.	Yes.	
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
§ 63.10(c)(2)–(4)		No	[Reserved].
§ 63.10(c)(5)–(8)		Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(14)		Yes.	
§ 63.10(c)(15)	Use of SSM Plan	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	§ 63.3000 includes additional requirements.
§ 63.10(d)(2)	Performance Test Results	Yes	§ 63.3000 includes additional requirements.
§ 63.10(d)(3)	Opacity or Visible Emissions Observations.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress Reports Under Extension of Compliance.	Yes.	
§ 63.10(d)(5)	SSM Reports	No, for new or reconstructed sources which commenced construction or reconstruction after April 6, 2018. Yes, for all other affected sources before August 28, 2019, and No thereafter.	See § 63.3000(c) for malfunction reporting requirements.

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.10(e)(1)	Additional CMS Reports—General	No	Subpart HHHH does not require CEMS.
§ 63.10(e)(2)	Reporting results of CMS performance evaluations..	Yes.	
§ 63.10(e)(3)	Excess Emission/CMS Performance Reports..	Yes.	
§ 63.10(e)(4)	COMS Data Reports	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	EPA retains approval authority.
§ 63.11	Control Device Requirements—Applicability..	No	Facilities subject to subpart HHHH do not use flares as control devices.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes	See § 63.14(b)(2) and (3) for applicability requirements.
§ 63.15	Availability of Information/Confidentiality.	Yes.	

[FR Doc. 2019–01685 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket Nos. 120328229–4949–02 and 180117042–8884–02]

RIN 0648–XG839

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; annual adjustment of Atlantic bluefin tuna Purse Seine and Reserve category quotas; inseason quota transfer from the Reserve category to the General category.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2019, as it has done annually since 2015. NMFS also is transferring 25 metric tons (mt) of BFT quota from the Reserve category to the General category January 2019 period (from January 1 through March 31, 2019, or until the available subquota for this period is reached, whichever comes first). The transfer to the General category is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective February 25, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9260, Uriah Forrest-Bulley, 978–675–2154, or Larry Redd, 301–427–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17–06 (83 FR 53191, October 11, 2018). As a result, based on the currently codified U.S. quota of 1,247.86 mt (not including the 25 mt allocated by ICCAT to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), the baseline Purse Seine, General, and Reserve category quotas are codified as 219.5 mt, 555.7 mt, and 29.5 mt, respectively. See § 635.27(a). For 2019 to date, NMFS has made the following inseason quota transfers: 19.5 mt from the General category December 2019 subquota period to the January 2019 subquota period (83 FR 67140, December 28, 2018) and 26 mt from the Reserve category to the General category (84 FR 3724, February 13, 2019), resulting in an adjusted 2019 Reserve category quota of 3.5 mt.

Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to the Atlantic Tunas Purse Seine category participants in 2019, based on their BFT catch (landings and dead discards) in 2018. In accordance with the regulations, NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, as described in § 635.27(a)(4)(ii), and reallocates the remainder to the Reserve category. NMFS has calculated the

amounts of quota available to the Purse Seine category participants for 2019 based on their individual catch levels in 2018 and the codified process adopted in Amendment 7. NMFS did not open the Purse Seine fishery in 2018 because there were no purse seine vessels permitted to fish for BFT and thus no catch in 2018. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 43.9 mt (219.5 mt divided by five Purse Seine category participants), 25 percent of which is 11 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS notifies Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the IBQ electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 55 mt are available to the Purse Seine category for 2019. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 164.5 mt (219.5 mt − 55 mt). This reallocation results in an adjusted 2019 Reserve category quota of 168 mt (3.5 mt + 164.5 mt), before any further transfers to other categories.

Transfer of 25 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). On February 20, 2019, the General category had landed 74 mt of its adjusted January 2019 subquota of 75 mt. At that time, NMFS considered that without a quota transfer, the January 2019 General category fishery would face closure, while unused quota remained in the Reserve category and commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that all 25 mt of transferred quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.,* the June through August time period), and NMFS anticipates that it would be used by the subquota category before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 25-mt transfer to the General category.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments, which include measures to meet obligations related to ending overfishing and rebuilding stocks (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2019 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2018 (*i.e.,* transferred 60 mt from the Reserve category effective September 18, 2018 (83 FR 47843, September 21, 2018); 40 mt form the Harpoon category and 15 mt from the Reserve category effective October 4, 2018 (83 FR 50857, October 10, 2018); and 9.9 mt from the Harpoon category and 129.2 mt from the General category effective November 29, 2018 (83 FR 62512, December 4, 2018). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable (§ 635.27(a)(8)(viii). Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds considering the expected increases in available 2019 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. bluefin tuna quota, without precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota. As the agency decision-making process for this inseason action progressed, additional catches in the General category brought landings to date up to 76.6 mt as of February 22, 2019. Given that this inseason action adjusting the quota was then pending, we determined that filing a closure notice, immediately followed by re-opening the General category, would create unnecessary administrative burden for NMFS and potentially confuse the regulated community.

Based on the considerations above, NMFS is transferring 25 mt from the adjusted Reserve category to the General

category for the January 2019 fishery, resulting in a subquota of 100 mt for the January 2019 fishery (75 mt + 25 mt) and 143 mt in the Reserve category (168 mt − 25 mt).

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.,* quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on, the transfer from the Reserve category to the General category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the fishery would be closed absent the additional quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would result in further exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b) and 635.27(a)(4), (7), (8), and (9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 25, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–03554 Filed 2–25–19; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180209147–8509–02]

RIN 0648–XG696

Fisheries of the Northeastern United States; Small-Mesh Multispecies Fishery; Inseason Adjustment to the Northern Red Hake Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action reduces that the commercial per-trip possession limit for northern red hake for the remainder of the 2018 fishing year. Regulations governing the small-mesh multispecies fishery require this action because the northern red hake fishery is projected to reach 37.9 percent of its total allowable landing limit for the year. This action is intended to prevent this limit from being exceeded. This announcement also informs the public of the reduced northern red hake possession limit.

DATES: Effective February 27, 2019, through April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the red hake fishery are found at 50 CFR part 648. The small-mesh multispecies fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fisheries Management Plan. The regulations describing the process to adjust inseason commercial possession limits of northern red hake are described in §§ 648.86(d)(4) and 648.90(b)(5). These regulations require the NMFS Regional Administrator, Greater Atlantic Region, to reduce the northern red hake possession limit from 3,000 lb (1,361 kg) to the incidental limit of 400 lb (181 kg) when landings have been projected to reach or exceed 37.9 percent of the total allowable landings (TAL), unless such a reduction would be expected to prevent the TAL from being reached. The final rule implementing the small-mesh multispecies specifications for 2018–2020 (83 FR 27713; June 14, 2018) set the northern red hake inseason adjustment threshold for the 2018 fishing year as 228,941 lb (103,846 kg); 37.9 percent of the northern red hake TAL for the year.

Based on commercial landings data reported through February 13, 2019, the northern red hake fishery is projected to reach 37.9 percent of the TAL on February 22, 2019. Using this projection, NMFS is required to reduce the commercial northern red hake possession limit to prevent the TAL from being exceeded. Therefore, effective February 27, 2019, no person may possess on board or land more than 400 lb (181 kg) of northern red hake per trip for the remainder of the fishing year (*i.e.,* through April 30, 2019).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action reduces the per-trip possession limit for northern red hake to the incidental limit of 400 lb (181 kg) until April 30, 2019, under current small-mesh multispecies fishery regulations. The regulations at § 648.86(d) require such action to ensure that commercial small-mesh multispecies vessels do not exceed the TAL set for the northern red hake stock. If implementation of this reduction was delayed, the northern red hake TAL for this fishing year may be exceeded, thereby undermining the conservation objectives of the Northeast Multispecies Fishery Management Plan. Therefore, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator further finds good cause to waive the 30-day delayed

effectiveness period for the reason stated above.

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

Dated: February 22, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–03457 Filed 2–27–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG724

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2019 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 25, 2019, through 1200 hours, A.l.t., June 10, 2019.

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

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

The A season allowance of the 2019 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 1,443 metric tons (mt), as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2019 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,300 mt and is setting aside the remaining 143 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 22, 2019.

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

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

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

Dated: February 22, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–03492 Filed 2–25–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0024; Product Identifier 2018–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2A12 (601) airplanes. This proposed AD was prompted by a report of damage to the anti-rotation tab on a main landing gear (MLG) side brace fitting due to the installation of an incorrect side brace fitting shaft. This proposed AD would require an inspection of the MLG side brace fitting for damage, a verification of the side brace fitting shaft part number, and replacement of the side brace fitting shaft if necessary. It would also require the installation of an anti-rotation bracket. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 15, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.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.

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–2019–0024; 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 (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kristopher Greer, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7799.

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–2019–0024; Product Identifier 2018–NM–138–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 because of 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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–19, dated July 20, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2A12 (601) airplanes. The MCAI states:

> There has been a report of damage to the anti-rotation tab on a Main Landing Gear (MLG) Side Brace fitting. Investigation of the report revealed that a Challenger model CL600 MLG Side Brace shaft had been installed on a Challenger model CL601 Side Brace fitting. Due to the difference in size, this will result in changes to the way the load is transferred between the shaft and the MLG Side Brace fitting and may result in premature cracking of the MLG Side Brace fitting. This condition, if not corrected, could lead to the collapse of the MLG resulting in structural damage to the wing spar and fuel tank.
>
> This [Canadian] AD mandates an inspection of the MLG Side Brace fitting and shaft to verify that the correct shaft part number (P/N) is installed and the fitting is not damaged [damage includes cracking, scratches, gouges, corrosion, defects, and incorrect inner diameter tolerance]. If the Challenger CL600 shaft is installed, this AD mandates replacement with the correct Challenger model CL601 part. If the correct P/N is found installed, this [Canadian] AD also mandates the installation of a bracket to prevent the incorrect part from being installed in the future.

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–2019–0024.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 601–0624, Revision 2, dated January 29, 2018. This service information describes procedures for inspecting the MLG side brace fitting and side brace fitting shaft, installing a replacement side brace fitting shaft if necessary, and installing an anti-rotation bracket.

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.

FAA's Determination

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 and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 9 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$397	$737	$6,633

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $680	$7,989	$8,669

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 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 adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2019–0024; Product Identifier 2018–NM–138–AD.

(a) Comments Due Date

We must receive comments by April 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2A12 (601) airplanes, certificated in any category, serial numbers (S/N) 3001 through 3009 inclusive and 3011 through 3029 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a report of damage to the anti-rotation tab on a main landing gear (MLG) side brace fitting due to the installation of an incorrect side brace fitting shaft. We are issuing this AD to address premature cracking of the MLG side brace fitting. This condition, if not corrected,

could lead to the collapse of the MLG, resulting in structural damage to the wing spar and fuel tank.

(f) Compliance

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

(g) Inspection for Damage and Identification of the Side Brace Fitting Shaft Part Number

Within 400 flight cycles or 12 months, whichever occurs first, after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Identify the part number of the installed side brace fitting shaft.

(2) Do a detailed visual inspection (DVI) of the side brace fitting for signs of damage, including cracking and gouges, in accordance with paragraph 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(h) Installation of Anti-Rotation Bracket

(1) For airplanes on which a side brace fitting shaft having P/N 600–10237–3 is installed and the actions required by paragraph (g) of this AD are done on or after the effective date of this AD: Before further flight, modify the MLG side brace fitting by installing the anti-rotation bracket in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(2) For airplanes on which a side brace fitting shaft having P/N 600–10237–3 is installed and the actions required by paragraph (g) of this AD were done before the effective date of this AD: Within 6 months after the effective date of this AD, modify the MLG side brace fitting by installing the anti-rotation bracket in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(i) Replacement of the Side Brace Fitting Shaft and Installation of the Anti-Rotation Bracket

(1) For airplanes on which a side brace fitting shaft having P/N 600–10237–1 or 600–10237–5 is installed and damage is found during the DVI of the side brace fitting: Before further flight, do a DVI of the anti-rotation tab and side brace fitting aft bushing for cracking, scratches, gouges, corrosion, and inner diameter tolerance, and a special detailed inspection (SDI) of the side brace fitting aft bore for cracks and defects; perform applicable repairs; replace the side brace fitting shaft with a side brace fitting shaft having P/N 600–10237–3; and install the anti-rotation bracket in accordance with paragraph 2.D. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(2) For airplanes on which a side brace fitting shaft having P/N 600–10237–1 or 600–10237–5 is installed and no damage is found during the DVI of the side brace fitting: Within 300 flight cycles or 12 months, whichever occurs first, after the inspection required by paragraph (g)(2) of this AD, do a DVI of the anti-rotation tab and side brace fitting aft bushing for cracking, scratches, gouges, corrosion, and inner diameter tolerance, and an SDI of the side brace fitting aft bore for cracks and defects; perform applicable repairs; replace the side brace fitting shaft with a side brace fitting shaft having P/N 600–10237–3; and install the anti-rotation bracket in accordance with paragraph 2.D. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(j) Exceptions to Service Information

Where Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018, specifies contacting Bombardier's Customer Support Engineering for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (l)(2) of this AD.

(k) Credit for Previous Actions

(1) For an airplane on which a side brace fitting shaft having P/N 600–10237–3 is installed this paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601–0624, dated October 1, 2012; or Bombardier Service Bulletin 601–0624, Revision 1, dated March 29, 2017.

(2) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601–0624, dated October 1, 2012; or Bombardier Service Bulletin 601–0624, Revision 1, dated March 29, 2017, provided that the side brace fitting shaft was identified as having P/N 600–10237–3 and within 6 months after the effective date of this AD, the MLG side brace fitting is modified by installing the anti-rotation bracket in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 2, dated January 29, 2018.

(3) This paragraph provides credit for actions required by paragraphs (g) and (i), if those actions were performed before the effective date of this AD, provided that any side brace fitting shaft having P/N 600–10237–1 or P/N 600–10237–5 was identified and replaced with a side brace fitting shaft having P/N 600–10237–3, and the anti-rotation bracket was installed in accordance with paragraph 2.D. of the Accomplishment Instructions of Bombardier Service Bulletin 601–0624, Revision 1, dated March 29, 2017.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(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, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (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–2018–19, dated July 20, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0024.

(2) For more information about this AD, contact Kristopher Greer, Aerospace Engineer, Aviation Safety Section AIR–7B1, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7799.

(3) For information about AMOCs, contact Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: 516–287–7329; fax: 516–794–5531; email: *Aziz.Ahmed@faa.gov.*

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.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.

Issued in Des Moines, Washington, on February 21, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03313 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9139; Directorate Identifier 2016–CE–023–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) that would have applied to certain Mitsubishi Heavy Industries, Ltd. Models MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes. The NPRM resulted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product and would have required repetitively inspecting the wing spacer plates for cracks until they were replaced with an improved design wing spacer plates. Since issuance of the NPRM, we determined that damage is contained to the wing spacer plate with no evidence that primary structure is affected. Accordingly, the NPRM is withdrawn.

DATES: As of February 28, 2019, the proposed rule, which published in the **Federal Register** on September 16, 2016 (81 FR 63725), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Bang Nguyen, Aerospace Engineer, FAA, Fort Worth ACO Branch, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone: (817) 222–4973; fax: (817) 222–5785; email: *bang.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM that proposed to amend 14 CFR part 39 to add an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on September 16, 2016 (81 FR 63725). The NPRM was prompted by the Japan Civil Aviation Bureau (JCAB), which is the aviation authority for Japan, AD No. TCD–8783–2016, dated June 28, 2016 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain Mitsubishi Heavy Industries (MHI) Models MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, and MU–2B–36 airplanes.

As part of the MHI MU–2B aging aircraft program, one-piece and three-piece main wings were subjected to detailed teardown inspections, and cracks were found in the wing spacer plates attached to the forward lower spar area at wing station 580. It was determined that the cracks resulted from fatigue caused by flight loads.

Japan is the State of Design for the MHI airplane models that the MCAI AD applies to: Models MU–2B–20, MU–2B–25, and MU–2B–26 with serial numbers (S/Ns) 102 and 121 through 347, except 313 and 321; and Models MU–2B–30, MU–2B–35, and MU–2B–36 with S/Ns 502 through 696, except 652 and 661. The United States is the State of Design for MHI Models MU–2B–10, MU–2B–15, MU–2B–25, MU–2B–26, MU–2B–26A, and MU–2B–40 with S/Ns 313SA, 321SA, and 348SA through 459SA; and Models MU–2B–36A and MU–2B–60 with S/Ns 661SA and 697SA through 1569SA airplanes. Japan is the State of Design for Models MU–2B–10 and MU–2B–15 airplanes, but has recently removed these models from the MHI Japanese type certificate. These models remain on the FAA type certificate; however, none of these airplanes are currently on the U.S. registry.

The NPRM proposed to require repetitively inspecting the wing spacer plates for cracks until they were replaced with an improved design wing spacer plates. The proposed actions were intended to detect and correct cracks in the wing spacer plates, which could result in reduced structural integrity of the wings and loss of control.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, we have received data from operators who completed the inspections specified in MHI MU–2 Service Bulletin No. 245, dated April 21, 2016, and MU–2 Service Bulletin No. 107/57–005, dated May 3, 2016. During the inspections, no cracking in a primary wing structure has been detected. We have determined that damage is contained to the wing spacer plates without affecting the primary structure. Our analysis of fleet data also demonstrates that the wing spar and the wing spar cap maintains conformity with the structural requirements of the type certificate after complete fracture of the wing spacer plate. Neither the JCAB nor the manufacturer has provided the FAA with sufficient data that an unsafe condition exists. Therefore, we have determined that AD action is not appropriate, and the NPRM should be withdrawn.

After we received numerous comments on the NPRM stating there is no unsafe condition, we requested additional information from JCAB to demonstrate that the cracks found in the spacers reduce the structural integrity of primary structure. JCAB replied that it took AD action because it is uncertain how the fatigue strength will be affected over the life of the airplane. In addition to the lack of conclusive data that there is an unsafe condition, we considered that removing the wing in order to perform the proposed corrective action may be more detrimental to the aircraft than the cracks themselves.

Withdrawal of this NPRM constitutes only such action and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, Docket No. FAA–2016–9139, which published in the **Federal Register** on September 16, 2016 (81 FR 63725), is withdrawn.

Issued in Kansas City, Missouri, on February 19, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–03397 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0041; Airspace Docket No. 19–AGL–6]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Mount Vernon, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Mount Vernon VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates and name of the airport would also be updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before April 15, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0041; Airspace Docket No. 19–AGL–6, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0041; Airspace Docket No. 19–AGL–6.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E surface area to within a 4.1-mile radius (reduced from a 4.2-mile radius) at Mount Vernon Airport, Mount Vernon, IL, and removing the Mount Vernon VOR/DME and the associate extension from the airspace legal description;

And amending the Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL, by removing the Mount Vernon VOR/DME and the associated extension from the airspace legal description; and by updating the name of the airport (formerly Mount Vernon/Outland Airport) and the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Mount Vernon VOR, which provided navigation information for the instrument

procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL IL E2 Mount Vernon, IL [Amended]

Mount Vernon Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)

Within a 4.1-mile radius of Mount Vernon Airport.

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

* * * * *

AGL IL E5 Mount Vernon, IL [Amended]

Mount Vernon Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mount Vernon Airport.

Issued in Fort Worth, Texas, on February 20, 2019.

John Witucki,

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

[FR Doc. 2019–03285 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0035; Airspace Docket No. 19–ASW–2]

RIN. 2120–AA66

Proposed Amendment of Class E Airspace; Brady, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Brady, Curtis Field, Brady, TX. This action is necessary due to the decommissioning of the Brady non-directional radio beacon (NDB), and cancellation of the NDB approach. It would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at this airport. Additionally, the geographic coordinates are being updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before April 15, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2019–0035; Airspace Docket No. 19–ASW–2, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending

upward from 700 feet above the surface at Brady Curtis Field, Brady, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0035; Airspace Docket No. 19–ASW–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov//air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class E airspace extending upward from 700 feet above the surface within 6.4 mile radius of the Brady Curtis Field. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of the Brady NDB, and cancellation of the NDB approach, which would enhance the safety and management of the standard instrument approaches.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Brady, TX [Amended]

Brady, Curtis Field, TX
(Lat. 31°10′45″ N, long. 99°19′26″ W)

That airspace extending upward from 700 feet above the surface within 6.4 mile radius of Curtis Field.

Issued in Fort Worth, TX, on February 19, 2019.

John Witucki,

Manager (A), Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–03289 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0081; Airspace Docket No. 19–AGL–8]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Manitowoc and Sheboygan, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Manitowoc County Airport, Manitowoc, WI, and Sheboygan County Memorial Airport, Sheboygan, WI. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Manitowoc VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of Sheboygan County Memorial Airport would also be updated to coincide with the FAA's aeronautic database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before April 15, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0081; Airspace Docket No. 19–AGL–8, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0081; Airspace Docket No. 19–AGL–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface at Manitowoc County Airport, Manitowoc, WI, by adding an extension 9.7 mile west and 5.8 miles east of the 352 bearing from the Manitowoc County: RWY 17–LOC extending from the Manitowoc County: RWY 17–LOC to 11 miles north of the Manitowoc County: RWY 17–LOC; and

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile radius (reduced from a 7-mile radius) at the Sheboygan County Memorial Airport, Sheboygan, WI; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Manitowoc

VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Manitowoc, WI [Amended]

Manitowoc County Airport, WI
(Lat. 44°07′44″ N, long. 87°40′50″ W)
Manitowoc County: RWY 17–LOC
(Lat. 44°07′04″ N, long. 87°40′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Manitowoc County Airport, and within 9.7 mile west and 5.8 miles east of the 352 bearing from the Manitowoc County: RWY 17–LOC extending from the Manitowoc County: RWY 17–LOC to 11 miles north of the Manitowoc County: RWY 17–LOC.

* * * * *

AGL WI E5 Sheboygan, WI [Amended]

Sheboygan County Memorial Airport, WI
(Lat. 43°46′11″ N, long. 87°51′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Sheboygan County Memorial Airport.

Issued in Fort Worth, Texas, on February 20, 2019.

John Witucki,

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

[FR Doc. 2019–03286 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–10607, File No. S7–01–19]

RIN 3235–AM23

Solicitations of Interest Prior to a Registered Public Offering

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing a new rule under the Securities Act of 1933 that would permit issuers to engage in oral or written communications with potential investors that are, or are reasonably believed to be, qualified institutional buyers or institutional accredited investors, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering. If adopted the rule would extend such accommodation currently available to emerging growth companies to all issuers.

DATES: Comments should be received by April 29, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment forms (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–01–19 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 S7–01–19. This file number should be included in 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 website (*https://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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.

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 Commission'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: Maryse Mills-Apenteng, Special Counsel, at (202) 551–3430, Office of Rulemaking, Division of Corporation Finance; Angela Mokodean, Senior Counsel, or Amanda Hollander Wagner, Branch Chief, at (202) 551–6921, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment 17 CFR 230.163B (new ''Rule 163B'') under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') and amendments to 17 CFR 230.405 (''Rule 405'') under the Securities Act.

Table of Contents

I. Introduction
II. Proposed Amendments
A. Proposed Exemption
B. Eligibility
C. Investor Status
D. Non-Exclusivity of the Proposed Rule
E. Considerations for Use by Investment Companies
III. Economic Analysis
A. Introduction and Broad Economic Considerations
B. Baseline and Affected Parties
1. Baseline
2. Affected Parties
C. Anticipated Economic Effects
1. Potential Benefits to Issuers
2. Potential Costs to Issuers
3. Potential Benefits to Investors
4. Potential Costs to Investors
5. Variation in Economic Impact Due to Issuer Characteristics
6. Variation in Economic Impact Due to Investor Characteristics
D. Reasonable Alternatives
E. Request for Comment
IV. Paperwork Reduction Act
V. Small Business Regulatory Enforcement Fairness Act
VI. Initial Regulatory Flexibility Act Analysis
A. Reasons for, and Objectives of, the Proposed Action
B. Legal Basis
C. Small Entities Subject to the Proposed Rule
D. Projected Reporting, Recordkeeping and Other Compliance Requirements
E. Duplicative, Overlapping, or Conflicting Federal Rules
F. Significant Alternatives
G. Request for Comment
VII. Statutory Authority

I. Introduction

In 2012, Congress passed the Jumpstart Our Business Startups Act (the ''JOBS Act''),[1] which created new Section 5(d) of the Securities Act.[2] Section 5(d) permits an emerging growth company (''EGC'')[3] and any person authorized to act on its behalf to engage in oral or written communications with potential investors that are qualified institutional buyers (''QIBs''), as that term is defined in paragraph (a) of 17 CFR 230.144A (''Rule 144A''), and institutional accredited investors (''IAIs'')[4] before or after filing a registration statement to gauge such investors' interest in a contemplated securities offering.[5] The Commission's rules have long recognized that QIBs and accredited investors have a level of financial sophistication and ability to sustain investment losses that render the protections of the Securities Act's registration process unnecessary.[6]

Permitting issuers to ''test the waters'' is intended to provide increased flexibility to issuers with respect to their communications about contemplated registered securities offerings, as well as a cost-effective means for evaluating market interest before incurring the costs associated with such an offering.[7] Although the test-the-waters provisions under Section 5(d) are available only to EGCs, such issuers make up a substantial portion of the IPO market. By one estimate, EGCs ''dominate the [IPO] market, accounting for 87% of IPOs that have gone effective since the JOBS Act was enacted in April 2012.''[8]

Evidence suggests that a significant percentage of EGC issuers conducting IPOs have availed themselves of the accommodation afforded by Section 5(d),[9] and there have been calls for the Commission to consider expanding the test-the-waters accommodation to issuers that are not EGCs,[10] as well as recent proposed legislation to effect such a change statutorily.[11] In our observation, pre-filing solicitations pursuant to Section 5(d) have not been a significant cause for concern with respect to investor protection. We believe that extending the test-the-waters accommodation to a broader range of issuers than provided in Section 5(d) may benefit more issuers seeking capital in our public markets and level the playing field with respect to permissible investor solicitations for EGCs and other issuers contemplating a registered securities offering. We believe that the ability to test the waters may also encourage additional participation in the public markets. Increased participation in our public markets, in turn, promotes more investment opportunities for more investors, including retail investors, as well as transparency and resiliency in the marketplace.

Notwithstanding Section 5(d), the Securities Act generally restricts communications by issuers contemplating a registered securities offering during various phases of the offering process. Under Section 5 of the Securities Act and related Securities Act rules, the communication restrictions

[1] Public Law 112–106, 126 Stat. 306 (2012).

[2] 15 U.S.C. 77e(d).

[3] The Section 5(d) exemption is available to ''emerging growth companies.'' An emerging growth company refers to an issuer that had total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. That issuer continues to be an emerging growth company for the first five fiscal years after the date of the first sale of its common equity securities pursuant to an effective registration statement, unless one of the following occurs: Its total annual gross revenues are $1.07 billion or more; it has issued more than $1 billion in non-convertible debt in the past three years; or it becomes a ''large accelerated filer,'' as defined in 17 CFR 240.12b–2 (''Rule 12b–2'') under the Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (the ''Exchange Act''). *See* Rule 405 and Rule 12b–2 (defining ''emerging growth company'').

[4] An institutional accredited investor refers to any institutional investor that is also an accredited investor, as defined in 17 CFR 230.501 (''Rule 501'') of Regulation D.

[5] Communications between an issuer and potential investors for the purpose of assessing investor interest before having to commit the time and expense necessary to carry out a contemplated securities offering are often referred to as ''testing the waters,'' and we use this term and its derivations throughout this release to refer to such communications.

[6] *See, e.g., Regulation D Revisions; Exemption for Certain Employee Benefit Plans,* Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015 (Feb. 2, 1987)] (describing the concept of ''accredited investor'' as a keystone of Regulation D ''intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act's registration process unnecessary''); *Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145,* Release No. 33–6862 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)] (noting that ''qualified institutional buyers,'' the definition of which is ''focused on assets invested in securities, should target, with more precision than the asset test originally proposed, sophisticated institutions with experience in investing in securities''). *See also* ''Report on the Review of the Definition of 'Accredited Investor,'" a report by the staff of the U.S. Securities and Exchange Commission, December 28, 2015 (providing a comprehensive review of the accredited investor definition, including background information on its origin).

[7] *See* H. Rept. 112–406—Reopening American Capital Markets to Emerging Growth Companies Act of 2011.

[8] Update on emerging growth companies and the JOBS Act, November 2016, Ernst and Young, LLP. *See also infra* note 88.

[9] *See, e.g.,* Tom Zanki, *Testing The Waters' Expansion Could Make IPOs Easier,* Law360 (April 30, 2018), *https://www.law360.com/articles/1038641* (citing IPO studies by Proskauer Rose LLP, which showed that 38% and 23% of EGCs used the test-the-waters accommodation in 2015 and 2016, respectively, with heavy concentration in the health care and technology-telecommunications-media sectors).

[10] *See, e.g., A Financial System That Creates Economic Opportunities: Capital Markets,* U.S. Dep't of the Treasury (2017), *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf* (''Treasury Report'') and *Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public,* Sec. Industry and Fin. Markets Association & Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, et al., (2018), *https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/05/CCMC_IPO-Report_v17.pdf* (''SIFMA Report'').

[11] *See* H.R. 3903 ''Encouraging Public Offerings Act of 2017''; and S. 2347 ''Encouraging Public Offerings Act of 2018.'' On July 17, 2018, the U.S. House of Representatives passed a House Amendment to S. 488 ''Encouraging Employee Ownership Act,'' which incorporates H.R. 3903.

depend primarily on the timing of the communication. Generally, written and oral offers prior to filing a registration statement are prohibited, absent an exemption.[12] Any violation of these restrictions—whether before, during or after a public offering—is commonly referred to as ''gun-jumping.''

Over the years, the Commission has undertaken several initiatives to liberalize communications during the offering process. As part of the Securities Offering Reform rulemaking, the Commission adopted, among other Securities Act communications reforms, 17 CFR 230.163 (''Rule 163'') to provide an exemption from Section 5(c) for pre-filing communications by well-known seasoned issuers (''WKSIs''), without limitation as to the type of investors that may be solicited, subject to certain filing and legending requirements.[13] Similarly, in its 2015 amendments to Regulation A, the Commission adopted 17 CFR 230.255 (''Rule 255'') that allows eligible issuers conducting an offering under Regulation A to engage in test-the-waters communications with potential investors, without restriction as to the type of investors, subject to compliance with certain disclaimer and filing requirements.[14] Each of these initiatives has contributed to the modernization of the Securities Act communications rules.[15]

As we continue to assess the effectiveness of the Securities Act offering communications framework, and in light of our experience with permissible test-the-waters communications under Section 5(d), we are proposing new Rule 163B to allow all issuers, including non-EGC issuers, to engage in test-the-waters communications with potential investors that are, or that the issuer reasonably believes to be, QIBs or IAIs, either prior to or following the date of filing of a registration statement related to such offering.[16] If adopted, the rule would provide an exemption from Section 5(b)(1) and Section 5(c) of the Securities Act for such communications.

We believe that, by allowing more issuers to engage with certain sophisticated institutional investors while in the process of preparing for a contemplated registered securities offering, the proposed rule could help issuers to better assess the demand for and valuation of their securities and to discern which terms and structural components of the offering may be most important to investors. This in turn could enhance the ability of issuers to conduct successful offerings and lower their cost of capital. To the extent this is the case, the proposed rule could encourage additional registered offerings in the U.S. We believe that increasing the number of registered offerings can have long-term benefits for investors and our markets, including improved issuer disclosure, increased transparency in the marketplace, better informed investors, and a broader pool of issuers in which any investor may invest.

We believe that many benefits of the proposed rule if finalized would similarly apply to investment company issuers. Test-the-waters communications may help investment company issuers better assess market demand for a particular investment strategy, as well as appropriate fee structures, prior to incurring the full costs of a registered offering. However, we also recognize that certain features of investment companies discussed below may make their use of the proposed rule more limited than other issuers.[17]

II. Proposed Amendments

A. Proposed Exemption

We are proposing an exemption from the gun-jumping provisions of Section 5 of the Securities Act for test-the-waters communications by an issuer contemplating a registered securities offering. Specifically, the proposed exemption would permit any issuer or person authorized to act on behalf of an issuer,[18] including an underwriter, either prior to or following the filing of a registration statement, to engage in oral or written communications with potential investors that are, or that the issuer reasonably believes are, QIBs or IAIs, to determine whether such investors might have an interest in the contemplated offering.

Section 5(c) prohibits any written or oral offers prior to the filing of a registration statement. Once an issuer has filed a registration statement, Section 5(b)(1) limits written offers to a ''statutory prospectus'' that conforms to the information requirements of Securities Act Section 10.[19] Under the proposed rule, communications soliciting interest in a registered securities offering with potential investors that are, or are reasonably believed to be, QIBs or IAIs would be exempt from Section 5(b)(1) and Section 5(c). The proposed rule would not be available, however, for any communication that, while in technical compliance with the rule, is part of a plan or scheme to evade the requirements of Section 5 of the Act.

Test-the-waters communications that comply with the proposed rule would not need to be filed with the Commission, nor would they be required to include any specified legends. We do not believe it is necessary to impose such requirements because communications under the proposed rule would be limited to investors that are, or are reasonably believed to be, QIBs and IAIs. These types of investors are generally considered to have the ability to assess investment opportunities, thereby reducing the need for the additional safeguards provided by a filing or legending requirement. Consistent with this approach, we are proposing to amend Rule 405 to exclude a written communication used in reliance on the

[12] *See* Securities Act Section 5(c).

[13] *See Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44721 (Aug. 3, 2005)]. *See also infra* note 53 and accompanying text (discussing legislation directing the Commission to extend the securities offering rules that are available to other issuers required to file reports under Section 13(a) or Section 15(d) of the Exchange Act (which include Rule 163) to business development companies and certain registered closed-end investment companies).

[14] *See Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A),* Release No. 33–9741 (Mar. 25, 2015) [80 FR 21805 (Apr. 20, 2015)] (''Regulation A Adopting Release'').

[15] In addition to these initiatives, in 1995 the Commission proposed to expand permissible pre-IPO solicitations of interest (the ''1995 Proposal'') for most issuers, subject to certain filing and legending requirements, ''to reduce the regulatory impediments and cost of accessing public markets consistent with investor protection interests.'' *See Solicitations of Interest Prior to an Initial Public Offering,* Release No. 33–7188 (Jun. 27, 1995) [60 FR 35648 (Jul. 10, 1995)] (''1995 Proposing Release''). The 1995 Proposal would not have imposed restrictions on investors to whom test-the-waters communications could be directed but did exclude certain specified categories of issuers, such as registered investment companies, asset-backed securities (''ABS'') issuers, and blank check and penny stock issuers. *See also infra* notes 122 and 125. The 1995 Proposal, however, was never adopted.

[16] EGCs would be able to rely on the proposed rule and would continue to be able to rely on the statutory accommodation in Section 5(d).

[17] *See infra* Sections II.E. and III.C.5.

[18] Under the proposed rule, an issuer or a person authorized to act on its behalf would be required to have a reasonable belief that a potential investor is a qualified institutional buyer or institutional accredited investor. *See* proposed Rule 163B(b)(1). In this release, for ease of discussion, we sometimes refer only to the issuer having a reasonable belief, though the reasonable belief requirement of proposed Rule 163B applies equally to any person authorized to act on an issuer's behalf.

[19] After effectiveness of a registration statement, a written offer, other than a statutory prospectus, may be made only if a final prospectus meeting the requirements of Securities Act Section 10(a) is sent or given prior to or at the same time as the written offer. *See* Securities Act Section 2(a)(10) [15 U.S.C. 77b(a)(10)]. A free writing prospectus, as defined in Securities Act Rule 405, which is a Section 10(b) prospectus, may also be used after effectiveness of a registration statement subject to the conditions of Securities Act Rules 164 and 433. The proposed rule does not modify or otherwise exempt these requirements.

proposed rule from the definition of free writing prospectus. As a result, any such communication that is limited to gauging interest in a contemplated registered securities offering would not be considered a ''free writing prospectus'' as that term is defined in Securities Act Rule 405. Furthermore, we are proposing that communications made under the proposed rule would not be required to be filed pursuant to 17 CFR 230.424(a) (''Rule 424(a)'') or 17 CFR 230.497(a) (''Rule 497(a)'') of Regulation C [20] under the Securities Act or Section 24(b) of the Investment Company Act of 1940 [21] (the ''Investment Company Act'') and the rules and regulations thereunder.[22]

We believe that the flexibility afforded in exempting test-the-waters communications from Sections 5(b)(1) and (c) would still maintain investor protections. The proposed rule would only allow test-the-waters communications with certain institutional investors, which, as noted above, do not need the protections of the Securities Act's registration process. Further, these communications, while exempt from the gun-jumping provisions of Section 5, would nonetheless still be considered ''offers'' as defined in Section 2(a)(3) of the Securities Act [23] and would therefore be subject to Section 12(a)(2) liability in addition to the anti-fraud provisions of the federal securities laws.[24]

Additionally, information provided in a test-the-waters communication under the proposed rule must not conflict with material information in the related registration statement. As is currently the practice of Commission staff when reviewing offerings conducted by EGCs, the Commission or its staff could request that an issuer furnish the staff any test-the-waters communication used in connection with an offering.[25]

Further, issuers subject to Regulation FD would need to consider whether any information in the test-the-waters communication would trigger any obligations under Regulation FD, or whether an exception to Regulation FD would apply.[26] Regulation FD requires public disclosure of any material nonpublic information that has been selectively disclosed to certain securities market professionals or shareholders [27] if the issuer has a class of securities registered under Section 12 of the Exchange Act or is required to file reports under Section 15(d) of the Exchange Act.[28] Thus, communications made under the proposed rule that also include material nonpublic information could be subject to 17 CFR 243.100(a) of Regulation FD unless an exclusion under 17 CFR 243.100(b)(2) of Regulation FD applies. For example, Regulation FD generally does not apply if the selective disclosure was made to a person who owes a duty of trust or confidence to the issuer or to a person who expressly agrees to maintain the disclosed information in confidence.[29] Thus, to avoid the application of Regulation FD, an issuer could consider obtaining confidentiality agreements from any potential investor engaged under the proposed rule.[30]

Request for Comment

1. Would the proposed exemption from Section 5(b)(1) and Section 5(c) to allow solicitations of interest from QIBs and IAIs prior to and following the filing of a registration statement provide issuers with appropriate flexibility in determining when to proceed with a registered public offering? Do test-the-waters communications aid issuers in assessing demand for their offerings? Do they aid issuers in structuring their offerings? Does this information potentially lead to a lower cost of capital? Would the additional flexibility provided by the proposed rule result in a greater number of issuers pursuing a registered public offering? Why or why not?

2. In what circumstances and how do EGCs currently take advantage of the accommodations of Securities Act Section 5(d)? What are the reasons why an EGC may choose not to avail itself of the accommodations?

3. Does the proposed expansion of permissible test-the-waters communications raise investor protection concerns? If so, how? Does the proposed expansion of permissible test-the-waters communications raise concerns of inappropriate marketing, conditioning, or hyping? How might such concerns be alleviated?

4. Should test-the-waters communications under the proposed rule be deemed ''offers'' under Securities Act Section 2(a)(3) that are subject to Section 12(a)(2) liability, as proposed? Why or why not?

5. Should we require written communications under the proposed rule to be filed with the Commission, for example, as an exhibit to a registration statement, and to become subject to Section 11 liability? Why or why not? If so, at what point should they be required to be filed?

6. Should legends or disclaimers be required on any written materials used in compliance with the proposed rule? Why or why not? If so, should we prescribe the content of those legends or disclaimers?

7. Should we permit written or oral solicitations of interest to be made by an issuer before and after a registration statement is filed, as proposed? Why or

[20] 17 CFR 230.401 through 230.498.

[21] 15 U.S.C. 80a–24.

[22] *See* proposed Rule 163B(b)(3); *see also infra* Section II.E (discussing the exemption from the filing requirements of 17 CFR 230.497 (''Rule 497'') and Section 24(b) of the Investment Company Act and the rules and regulations thereunder for communications made by registered investment companies and business development companies under the proposed rule).

[23] Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] defines ''offer'' as any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The term ''offer'' has been interpreted broadly and goes beyond the common law concept of an offer. *See Diskin* v. *Lomasney & Co.,* 452 F.2d 871 (2d. Cir. 1971); *SEC* v. *Cavanagh,* 1 F. Supp. 2d 337 (S.D.N.Y. 1998).

[24] Section 12(a)(2) of the Securities Act provides purchasers of an issuer's securities in a registered offering private rights of action for materially deficient disclosure in oral communications and prospectuses and imposes liability on sellers for offers or sales by means of an oral communication or prospectus that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, in light of the circumstances on which they were made, not misleading. Liability under Section 12(a)(2) would attach to test the waters oral and written communications under the proposed rule both before and after a registration statement has been filed. Communications under the proposed rule would also be subject to the anti-fraud provisions of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b–5 thereunder.

[25] *See* 17 CFR 230.418 of the Securities Act.

[26] *See* 17 CFR 243.100 *et seq.* of the Securities Act.

[27] *See* 17 CFR 243.100(b)(1) of Regulation FD. Many QIBs and IAIs are the types of securities market professionals or shareholders covered by Regulation FD.

[28] *See* 17 CFR 243.101(b) of Regulation FD. Regulation FD applies to closed-end investment companies as defined in Section 5(a)(2) of the Investment Company Act [15 U.S.C. 80a–5(a)(2)] but not other investment companies. Regulation FD also does not apply to any foreign government or foreign private issuer, as those terms are defined in Securities Act Rule 405.

[29] *See* Regulation FD Rule 100(b)(2). Regulation FD also provides a limited exception for communications in connection with certain registered securities offerings if the disclosure is made by: A registration statement filed under the Securities Act; a free writing prospectus used after filing a registration statement for the offering or a communication falling within the exception to the definition of prospectus contained in clause (a) of section 2(a)(10) of the Securities Act; any other Section 10(b) prospectus; a notice permitted by 17 CFR 230.135 under the Securities Act; a communication permitted by 17 CFR 230.134 (''Rule 134'') under the Securities Act; or an oral communication made in connection with the registered securities offering after filing of the registration statement for the offering under the Securities Act. *See id.*

[30] *See* Regulation FD Rule 100(b)(2)(ii). If the issuer determines not to proceed with the offering and the filing of a registration statement at that time, the issuer may choose to disclose information regarding the communications publicly in order to release the potential investors from the terms of such confidentiality agreement.

why not? Should we treat pre-filing and post-filing test-the-waters communications differently? If so, how should they be treated?

8. In what circumstances does Regulation FD affect the use of the current accommodation for test-the-waters communications under Section 5(d)? Should there be a specific exception to Regulation FD for some or all communications made in compliance with the proposed rule? If so, under what circumstances and how should such an exception apply?

B. Eligibility

Any issuer, or person authorized to act on behalf of the issuer, would be able to rely on the proposed rule to engage in exempt oral or written communications with potential investors that are, or that the issuer or person authorized to act on behalf of the issuer reasonably believes are, QIBs or IAIs. All issuers—including non-reporting issuers, EGCs, non-EGCs, WKSIs, and investment companies (including registered investment companies and business development companies (''BDCs'')) [31]—would be eligible to rely on the proposed rule.[32] We believe that, in light of our experience with test-the-waters communications for EGCs under Section 5(d), and given the sophisticated nature of the institutional investors to which communications under the proposed rule could be directed, it is appropriate to expand the accommodations to all issuers.[33]

Request for Comment

9. Should the proposed rule be available to all issuers as proposed? Why or why not?

10. Should certain groups of issuers, such as non-reporting issuers, ABS issuers, certain or all types of ''ineligible issuers'' as defined in Rule 405, such as blank check issuers or penny stock issuers, be excluded from the rule? If so, which issuers should be excluded and why? Should communications related to certain types of securities offerings be excluded from the rule? If so, which types of offerings and why?

C. Investor Status

If adopted, the rule would permit an issuer to engage in pre- and post-filing solicitations of interest with potential investors that are, or that the issuer reasonably believes to be, QIBs and IAIs.[34] A QIB is a specified institution that, acting for its own account or the accounts of other QIBs, in the aggregate, owns and invests on a discretionary basis at least $100 million in securities of unaffiliated issuers.[35] Banks and other specified financial institutions must also have a net worth of at least $25 million.[36] A registered broker-dealer qualifies as a QIB if, in the aggregate, it owns and invests on a discretionary basis at least $10 million in securities of issuers that are not affiliated with the broker-dealer.[37] IAIs are any institutional investor that is also an accredited investor, as defined in paragraph (a) of Rule 501 of Regulation D. Specifically, for the purposes of the proposed rule, an IAI would be an institution that meets the criteria of Rule 501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8). The proposed limitation to these institutional investors is intended to ensure that test-the-waters communications are directed to investors that are financially sophisticated and therefore do not require the same level of protections of the Securities Act's registration process as other types of investors.

Under the proposed rule, any potential investor solicited must meet, or issuers must reasonably believe that the potential investor meets, the requirements of the rule. We believe this standard would avoid imposing an undue burden on issuers compared to requiring issuers to verify investor status, as in 17 CFR 230.506(c) (''Rule 506(c)'') of Regulation D. For example, under the proposed rule, an issuer could reasonably believe that a potential investor is a QIB or IAI even though the investor may have provided false information or documentation to the issuer. We do not believe an issuer should be subject to a violation of Section 5 in such circumstances, so long as the issuer established a reasonable belief with respect to the potential investor's status based on the particular facts and circumstances.

We are not proposing to specify the steps an issuer could or must take to establish a reasonable belief that the intended recipients of test-the-waters communications are QIBs or IAIs.[38] Identifying specific steps or providing additional guidance that could be used by an issuer to establish a reasonable belief regarding an investor's status could create a risk that such steps or guidance would become a de facto minimum standard. Instead, we believe issuers should continue to rely on the methods they currently use to establish a reasonable belief regarding an investor's status as a QIB or accredited investor pursuant to Securities Act Rules 144A and 501(a), respectively. By not specifying the steps an issuer could or must take to establish a reasonable belief as to investor status, this approach is intended to provide issuers with the flexibility to use methods that are cost-effective but appropriate in light of the facts and circumstances of each contemplated offering and each potential investor.

Request for Comment

11. Should issuers be required to establish a reasonable belief that the potential investors involved in proposed Rule 163B communications are QIBs and IAIs, as proposed? If not, what would be the appropriate standard? Are existing guidance and practice sufficient for issuers to be able to establish a reasonable belief with respect to QIB and IAI status? Should the proposed rule provide a non-exclusive list of methods that could be used to establish a reasonable belief as to whether an investor is a QIB or IAI? Why or why not?

[31] *See infra* Section II.E (discussing the proposed rule's application to investment companies).

[32] Under Section 5(d), test-the-waters communications are only permitted for as long as an issuer qualifies as an EGC, which can be up to five years after the date of the first sale of the issuer's common equity securities pursuant to an effective registration statement. Since the proposed rule would be available to all issuers, there would be no similar limitation on qualification. An EGC would have the option of relying on the proposed rule or on Section 5(d) when it engages in any test-the-waters communications.

[33] This is in contrast with the 1995 Proposal, which would have excluded certain specified categories of issuers but which would have allowed testing the waters with all investors, not just QIBs or IAIs.

[34] Although this discussion refers to the ''issuer,'' under the proposed rule an issuer or a person authorized to act on its behalf would be required to reasonably believe a potential investor is a qualified institutional buyer or institutional accredited investor. *See* proposed Rule 163B(b)(1).

[35] 17 CFR 230.144A(a)(1)(i).

[36] 17 CFR 230.144A(a)(1)(vi).

[37] 17 CFR 230.144A(a)(1)(ii).

[38] Although Securities Act Rule 501(a) does not provide specific details as to the actions an issuer can take to form a reasonable belief that an entity meets the definition of an institutional accredited investor, Rule 144A(d)(1) sets forth non-exclusive means to determine whether a prospective purchaser is a QIB. The rule provides that a seller and any person acting on its behalf are entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investment of securities: (i) The prospective purchaser's most recent publicly available financial statements; (ii) the most recent publicly available information appearing in documents filed by the prospective purchaser with the Commission or another U.S. federal, state, or local government agency or self-regulatory organization, or with a foreign governmental agency or self-regulatory organization; (iii) the most recent publicly available information appearing in a recognized securities manual; or (iv) a certification by the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the purchaser, specifying the amount of securities owned and invested on a discretionary basis by the purchaser as of a specific date on or since the close of the purchaser's most recent fiscal year.

12. Should the proposed exemption limit communications to QIBs and IAIs, as proposed? Why or why not? If not, what different types of investors should issuers be permitted to communicate with? Alternatively, should there be no restrictions on the types of investors that issuers could communicate with under this rule? Why or why not? If there are no restrictions on the types of investors that issuers could communicate with, should the rules impose any filing or legending requirements for the communications? Why or why not?

D. Non-Exclusivity of the Proposed Rule

The proposed rule would be non-exclusive. Attempted compliance with proposed Rule 163B would not act as an exclusive election and an issuer could rely on other Securities Act communications rules or exemptions when determining how, when, and what to communicate related to a contemplated securities offering. An issuer would not be precluded, for instance, from relying on the proposed rule and Securities Act Section 5(d), Securities Act Rules 163, or 17 CFR 230.164 (''Rule 164''), or Rule 255 of Regulation A. The following table summarizes some of the existing provisions that issuers may rely on in addition to, or in lieu of, the proposed rule:

Provision	Summary
Section 5(d)	• Allows EGCs and those acting on their behalf to test the waters with QIBs and IAIs before and after filing a registration statement to gauge their interest in a contemplated registered offering.
Rule 163	• Allows WKSIs to make oral and written offers before a registration statement is filed, subject to certain conditions. • Does not restrict communications to any particular group of potential investors. • The communications may be made by or on behalf of the WKSI, but may not be made on behalf of the WKSI by an offering participant who is an underwriter or dealer.[39] • Not available for communications related to business combination transactions or communications by registered investment companies or BDCs.[40] • Written communications are subject to certain legending requirements and a requirement to file such communications promptly upon the filing of a registration statement.[41]
Rule 164	• Allows certain issuers to use free writing prospectuses (''FWPs'') after filing a registration statement, on the condition that such FWPs are accompanied by legends and are publicly filed.[42] • Ineligible issuers, as defined in Rule 405 cannot rely on Rule 164 except where the FWPs of such ineligible issuers, other than penny stock, blank check, and shell companies (other than business combination-related shell companies), solely contain a description of the terms of the securities being offered and the offering. • Registered investment companies and BDCs also currently cannot rely on Rule 164 to use FWPs.[43]
Rule 255	• Permits issuers to engage in solicitations of interest in Regulation A offerings before and after filing a Form 1–A, so long as the solicitation materials meet certain conditions, such as including legends or disclaimers and filing requirements.[44]

While an issuer contemplating a registered securities offering may solicit interest from QIBs and IAIs without legending or filing those materials in compliance with new Rule 163B, if the same issuer decides to claim the availability of another exemption or communication rule with respect to those communications, the conditions of the other exemption or rule relied upon must be satisfied.

For instance, a WKSI may intend to solicit interest from QIBs under the new rule and, in compliance with the rule, omit any legending. If the issuer decides later during the offering process to expand pre-filing solicitations of interest to include potential investors not within the scope of Rule 163B, for example accredited investors that are natural persons, the issuer may instead be able to claim an exemption under Rule 163. To avail itself of that exemption, the issuer must have complied with Rule 163's legending requirements from the start of any communications with non-QIBs or non-IAIs, and would have to file the legended materials if a registration statement is filed. Similarly, if an issuer engaged in test-the-waters communications with institutional investors to determine whether to pursue either a registered securities offering or an offering under Regulation A, the issuer must comply with the legending and filing requirements of Securities Act Rule 255 until such time that it determines not to pursue the Regulation A offering.[45]

Request for Comment

13. Should the proposed rule be non-exclusive, as proposed? Why or why not?

14. How would the proposed rule affect reliance on Section 5(d), Rule 163, Rule 164, or Rule 255, if at all? In light of the proposed rule, are there changes that we should consider making to those rules?

15. Are there other rules not addressed above that we should consider that could affect or be affected by the proposed rule? If so, how should we address the interaction between such other rules and the proposed rule?

E. Considerations for Use by Investment Companies

Issuers that are, or are considering becoming, registered investment companies or BDCs (together, ''funds'') would be eligible to engage in test-the-waters communications under the proposed rule. Funds and their advisers may have an interest in engaging in test-the-waters communications to help assess market demand for a fund—for example, for a particular investment strategy or fee structure—before incurring the full costs of a registered offering. Thus, we believe it would be appropriate to allow funds to rely on the proposed rule. However, as discussed below, funds' use of test-the-waters communications under the proposed rule, and the associated benefits, may be more limited than for other issuers in practice, particularly with respect to pre-filing communications.

Fund communications contemplated by proposed Rule 163B generally would be considered ''sales literature'' and are

[39] *See* Rule 163(c).

[40] While registered investment companies and BDCs cannot currently rely on Rule 163, Congress has directed the Commission to extend the securities offering rules that are available to other issuers required to file reports under Section 13(a) or Section 15(d) of the Exchange Act (which include Rule 163) to BDCs and certain registered closed-end investment companies. *See infra* note 53 and accompanying text.

[41] *See* Rule 163(b).

[42] *See* Rule 164(b) and Rule 433(d).

[43] *See infra* note 53 and accompanying text.

[44] *See* 17 CFR 230.255(b).

[45] Test-the-waters communications under Regulation A must state that: (i) No money is being solicited or will be accepted, if sent in response; (ii) no sales will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering; and (iii) a prospective purchaser's indication of interest is non-binding. *See* Securities Act Rule 255.

currently subject to their own rules under the Securities Act and Investment Company Act.[46] Under the current framework, compliance with these rules is generally necessary for certain communications not to be deemed an offer that otherwise could be a non-conforming prospectus whose use may violate Section 5 of the Securities Act.[47] For example, after a fund has filed a registration statement, it may engage in communications that are advertisements under Rule 482 under the Securities Act,[48] or that are deemed to be sales literature under Rule 34b–1 under the Investment Company Act.[49] Communications under Rule 482 and Rule 34b–1 are also subject to certain filing,[50] disclosure,[51] and legending requirements.[52] In addition, Congress has directed the Commission to extend the securities offering rules that are available to other issuers required to file reports under Section 13(a) or Section 15(d) of the Exchange Act (which include certain communications rules) to BDCs and certain registered closed-end investment companies.[53] Under the proposal, funds could rely on proposed Rule 163B to engage in permissible test-the-waters communications without complying with these other communications rules.

Because funds are primarily investment vehicles (*i.e.,* they are formed to issue securities that provide investors with an interest in the pool of assets held by the fund), a fund typically conducts an exempt or registered offering within a relatively short period of time after it is organized in comparison to most other types of issuers. We understand that, as part of this process, funds typically register as investment companies[54] during a seeding period in which the fund's sponsor tests the fund's investment strategy and establishes a performance track record for marketing purposes.[55] Under the proposed rule, a fund could engage in test-the-waters communications with QIBs and IAIs during the seeding period without filing a Securities Act registration statement. However, if a fund is contemplating a registered offering at the time of its organization, we recognize it is common practice to simultaneously file a registration statement under both the Investment Company Act and the Securities Act to take advantage of certain efficiencies.[56] If funds collectively continue to prefer to file a single registration statement under both Acts under these circumstances, funds may be less likely to use the proposed rule for pre-filing communications than other issuers.[57] In any event, however, funds that preliminarily engage in exempt offerings—including certain registered closed-end funds and BDCs—could rely on the proposed rule to engage in pre-filing communications if they are considering a subsequent registered offering.[58]

In addition, funds may benefit from test-the-waters communications after filing a Securities Act registration statement. Proposed Rule 163B would allow them to communicate with QIBs and IAIs about a contemplated offering without either being an EGC or complying with the requirements of Section 24(b) of the Investment Company Act or Rules 482 or 34b–1, including the associated filing, disclosure, and legending requirements. To promote consistent treatment of different types of issuers' test-the-waters communications under proposed Rule 163B and for similar policy reasons as explained above with respect to other issuers, we are proposing to exclude funds' test-the-waters communications conducted under proposed Rule 163B from the filing requirements in Rule 497 under the Securities Act and in Section 24(b) of the Investment Company Act and the rules thereunder.[59]

Request for Comment

16. Would funds or persons acting on their behalf rely on the proposed rule in

[46] *See, e.g.,* Section 24(g) of the Investment Company Act [15 U.S.C. 80a–24(g)]; 17 CFR 230.482 (''Rule 482'') under the Securities Act; and 17 CFR 270.34b–1(''Rule 34b–1'') under the Investment Company Act.

[47] However, BDCs that are EGCs can currently engage in the communications that proposed Rule 163B contemplates pursuant to Securities Act Section 5(d). *See* 15 U.S.C. 77e(d).

[48] Rule 482 establishes requirements for advertisements or other sales materials with respect to the securities of registered investment companies and BDCs. The rule does not apply to certain specified communications, including advertisements excepted from the definition of prospectus under section 2(a)(10) of the Securities Act.

[49] Rule 34b–1 provides that any advertisement, pamphlet, circular, form letter, or other sales literature (''sales literature'') addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by Section 24(b) of the Investment Company Act will have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless it includes certain specified information. *See infra* note 59 (discussing the scope of Section 24(b) of the Investment Company Act).

[50] *See* 17 CFR 230.482(h) under the Securities Act; Rule 497(i) under the Securities Act; Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)]; 17 CFR 270.24b–2 under the Investment Company Act; 17 CFR 270.24b–3 under the Investment Company Act.

[51] For example, Rule 482 and Rule 34b–1 restrict, among other things, the manner in which registered open-end funds present performance information. *See* 17 CFR 230.482(b)(3), (d), (e), and (g) under the Securities Act; 17 CFR 270.34b–1(b) under the Investment Company Act.

[52] *See, e.g.,* 17 CFR 230.482(b)(2) under the Securities Act; 17 CFR 230.482(b)(3)(i) under the Securities Act.

[53] *See* Section 803(b) of Small Business Credit Availability Act, Public Law 115–121, title VII; Section 509(a) of Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115–174.

[54] Absent any available exemptions under Section 3 or Section 6 of the Investment Company Act, a fund is generally required to register as an investment company before offering its shares. *See* Section 7 of the Investment Company Act [15 U.S.C. 80a–7].

A fund that qualifies for the business development company exemption in Section 6(f) of the Investment Company Act is not required to register as an investment company and may rely on this exemption for a period of time before electing to be regulated as a BDC. *See* Sections 6(f) and 54 of the Investment Company Act [15 U.S.C. 80a–6(f) and 80a–53]; Form N–6F and Form N–54A under 17 CFR 274.15 and 274.54 of the Investment Company Act.

[55] A fund may be able to qualify for one of the private fund exemptions in Section 3(c)(1) or 3(c)(7) of the Investment Company Act during the seeding period. We understand, however, that, in practice, funds currently do not typically rely on these exemptions during the seeding period. Moreover, if a fund is planning to conduct a registered public offering, these exemptions generally would become unavailable if it makes, or proposes to make, a public offering. *See* Section 3(c)(1) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)] (requiring that an issuer ''is not making and does not presently propose to make a public offering of its securities''); Section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] (requiring that an issuer ''is not making and does not at [the time of acquisition of its securities by qualified purchasers] propose to make a public offering of its securities'').

[56] Registered investment companies generally are able to use the same Commission form, and provide much of the same information, to register under the Investment Company Act and to register a securities offering under the Securities Act. Simultaneously filing under both Acts allows a fund to make fewer filings with the Commission, which can reduce certain associated burdens.

[57] Since a BDC is not required to register under the Investment Company Act, it may to some extent be more likely to use the proposed rule to engage in pre-filing communication when it is contemplating a registered offering close in time to the fund's inception. *See supra* note 54.

[58] Registered open-end funds may be less likely to use the proposed rule because they typically offer their shares to retail investors in registered offerings.

[59] Rule 497 requires investment companies to file every form of prospectus given to any person prior to the effective date of the registration statement that varies from the form of prospectus included in its registration statement. Section 24(b) of the Investment Company Act generally requires filing of any sales literature that a registered open-end company, registered unit investment trust, or registered face-amount certificate company, or an underwriter of any such fund, intends to distribute to prospective investors in connection with a public offering of the fund's securities. 15 U.S.C. 80a–24(b). The definition of ''sales literature'' could include communications under proposed Rule 163B. *See* Investment Company Act Release No. 89 (Mar. 13, 1941) [11 FR 10992 (Sept. 27, 1946)] (''So it may be said that every written communication used by the issuer or an underwriter with the intention of inducing or procuring, or of facilitating the inducement or procurement, of any sale of the securities of any of the companies enumerated in section 24(b) is within the purview of that section.'').

practice? If so, in what contexts would they use the proposed rule, and what would be the associated benefits? For example, would the proposed rule impact communications during the product development stage before a registration statement is filed? Why or why not? Are there ways we should modify the proposed rule with respect to fund issuers in recognition of differences between funds and corporate issuers (*e.g.,* differences in general investor bases)?

17. Would certain types of funds (such as BDCs and registered closed-end funds) be more likely to benefit from the proposed rule than other types of funds (such as open-end funds)? Should certain or all funds be excluded from the scope of the proposed rule? Why or why not?

18. Do BDCs that are EGCs currently engage in test-the-waters communications? If so, under what circumstances have test-the-waters communications been useful? If test-the-waters communications have not been useful to BDCs that are EGCs, why have they not been useful? Have these communications been limited due to any restrictions in the Investment Company Act or other legal requirements? If so, should we provide any exemptions from these requirements? Why or why not?

19. Are there legal or other restrictions that would impede the ability of fund sponsors, underwriters, or others to engage in test-the-waters communications under the proposed rule in connection with forming a new registered investment company or BDC? If so, how should we address such restrictions? For example, could Section 7 of the Investment Company Act restrict or limit the usefulness of test-the-waters communications in practice? [60] Should we provide an exemption from Section 7 of the Investment Company Act for test-the-waters communications conducted under the proposed rule, for some or all types of fund issuers? Why or why not?

20. Should we restrict the types of information that funds can provide under the proposed rule? For example, should we limit open-end fund performance information in test-the-waters communications, similar to Rule 482? Why or why not? Should we apply other requirements, such as filing, disclosure, or legending requirements, to funds' written test-the-waters communications?

21. Would a private fund that is considering converting to a registered investment company or BDC benefit from engaging in test-the-waters communications with QIBs and IAIs to inform this decision, or would the decision to convert be driven by communications with existing investors? If a private fund would have a use for test-the-waters communications, are there legal or other restrictions that would limit the ability of the private fund, or persons authorized to act on its behalf, to rely on the proposed rule? For example, would language in Section 3(c)(1) or 3(c)(7) of the Investment Company Act restricting public offerings have a potential chilling effect on otherwise permissible test-the-waters communications under the proposed rule? [61] If so, how should we address this issue?

22. To the extent that open-end funds would benefit from the ability to engage in pre- or post-filing test-the-waters communications with QIBs and IAIs, are there differences between series funds (*i.e.,* where a single registrant can create new funds by filing post-effective amendments to its registration statement) [62] and non-series funds that the rule should take into account?

III. Economic Analysis

A. Introduction and Broad Economic Considerations

We are mindful of the costs imposed by and the benefits obtained from our rules. Securities Act Section 2(b) [63] and Investment Company Act Section 2(c) [64] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As noted above, Securities Act Section 5(d) was enacted under the JOBS Act and permits EGCs to engage in communications with QIBs or IAIs to determine their interest in an offering before or after the filing of a registration statement. However, companies that do not presently qualify as EGCs (including companies that previously qualified as EGCs but that have lost EGC status, larger companies, companies that first issued common equity pursuant to a Securities Act registration statement before December 8, 2011, asset-backed issuers, and registered investment companies) cannot avail themselves of Section 5(d) when raising capital through registered offerings, resulting in potential competitive impacts. The lower flexibility in raising capital through registered offerings may contribute to decreased willingness among non-EGCs to rely on registered offerings or impair their ability to raise capital through registered offerings at a lower cost. The proposed rule would expand the permissibility of test-the-waters communications to all issuers and potential issuers in contemplated registered securities offerings, regardless of whether such issuers qualify as EGCs.

Test-the-waters communications would provide issuers, particularly non-EGC issuers that are unable to rely on Section 5(d), with additional tools to gather valuable information about investor interest before a potential registered offering. By allowing issuers to gauge market interest [65] in a contemplated registered securities offering, these communications could result in a more efficient and potentially lower-cost and lower-risk capital raising process for issuers. By extending the flexibility presently afforded to EGCs to all issuers, including non-EGCs, the proposed rule would result in greater harmonization of offering process requirements between EGC and non-EGC issuers (including issuers that previously had EGC status but no longer qualify as EGCs). As the use of test-the-waters communications would remain voluntary, we anticipate that the issuers most likely to engage in these communications would be those issuers that expect the benefits of this strategy to outweigh the costs. Specifically, we expect that the issuers that are most likely to use the proposed rule would be those that are seeking to better assess the demand for and valuation of their securities, as well as those that are seeking more information from potential investors regarding the attractiveness of various terms or structural elements of

[60] *See supra* note 54.

[61] *See supra* note 55.

[62] Many open-end funds are organized as single registrants with several series under Sections 18(f)(1) and (2) of the Investment Company Act and Rule 18f–2 thereunder. *See* 15 U.S.C. 80a–18(f)(1) and (2); 17 CFR 270.18f–2. A registrant may add a series—which is often treated as a separate fund under our rules and which has its own investment objective, policies, and restrictions—by filing a post-effective amendment to its registration statement. *See, e.g.,* 17 CFR 230.485 under the Securities Act.

[63] 15 U.S.C. 77b(b).

[64] 15 U.S.C. 80a–2(c).

[65] Test-the-waters communications with institutional investors can help issuers gauge market interest in an offering because institutions account for a key part of the pool of investors in public offerings, particularly for larger companies. *See, e.g.,* Lowry, M., R. Michaely, and E. Volkova, 2017. Initial public offerings: a synthesis of the literature and directions for future research. Foundations and Trends in Finance 11(3–4), 154–320.

the offering.[66] This could in turn enhance the ability of issuers to conduct successful offerings and potentially lower their cost of capital.

By reducing the potential costs and risks associated with conducting a registered securities offering, the proposed rule might make registered securities offerings more attractive to certain issuers, particularly non-EGC issuers, that otherwise would have relied on private placements or not pursued a securities offering.[67] The resulting potential increases in the number of registered offerings and reporting companies may improve capital formation and efficiency of allocation of investor capital. However, because some of the issuers undertaking registered offerings as a result of proposed Rule 163B might have otherwise raised capital in private markets, the net impact on total capital formation is difficult to assess.

The proposed rule also might provide information to some potential investors about a broader range of potential future offerings at an earlier stage, before a registration statement is publicly filed, which might on the margin enable such investors to formulate a more informed investment strategy. However, the proposed rule might have adverse effects on such investors if the test-the-waters communications contain incomplete or misleading information and if solicited investors improperly rely on such communications rather than on the filed offering materials when making investment decisions. We expect such potential adverse effects on investors to be mitigated by several factors, including the general applicability of anti-fraud provisions of the federal securities laws and liability under Section 12(a)(2),[68] as well as the limitation of permissible test-the-waters communications under the proposed rule to QIBs and IAIs, which generally have a sophisticated ability to process investment information.

By extending to all issuers the flexibility to test the waters currently available only to EGCs, the proposed rule also would eliminate the competitive disadvantage of those non-EGC issuers that might find test-the-waters communications to be of value to their capital raising efforts. This competitive disadvantage is particularly pronounced today for non-EGCs that are close to meeting—but marginally fail to meet—EGC eligibility criteria. In turn, to the extent that EGCs compete with non-EGCs for investor capital and in the product market, the incremental benefits that accrue to non-EGCs under the proposed rule (the ability to pursue a more efficient capital raising strategy while limiting the risk of early disclosure of proprietary information) might have an adverse competitive effect on EGCs.

Potential users of the proposed rule include, for example, issuers contemplating an IPO as well as reporting issuers that are interested in conducting follow-on and other registered offerings. Regulation FD may limit use of the proposed rule by some issuers in the second group. As discussed in Section II.A above, issuers subject to Regulation FD that selectively disclose material nonpublic information regarding the issuer to specified parties are required to disclose such information publicly. Accordingly, reporting issuers that selectively disclose material nonpublic information to QIBs and IAIs in reliance on the proposed rule may be required to disclose publicly certain test-the-waters communications notwithstanding the fact that the proposed rule would not require such disclosure. This may reduce reliance on proposed Rule 163B. However, some issuers that would be able to rely on proposed Rule 163B are not subject to Regulation FD[69] or may avail themselves of an exception under Regulation FD, such as the exception involving confidentiality agreements.[70]

Where possible, we have attempted to quantify the economic effects of the proposed rule. However, in some cases we are unable to do so. For example, it is difficult to quantify the extent to which issuers would elect to test the waters in connection with a contemplated registered securities offering under the proposed rule; the extent to which the option to engage in test-the-waters communications would affect the willingness of potential issuers newly eligible for testing the waters under the proposed rule to undertake registered securities offerings; the effects of test-the-waters communications on the amount and cost of capital raised; and the effect of expanding permissible test-the waters communications on the ability of QIBs and IAIs to form informed assessments of issuer quality and the securities offered for the purposes of determining interest in a contemplated offering.

We have been able to gain some insight into the potential economic effects of the proposed rule based on the experience of EGC issuers that have been permitted to test the waters pursuant to Securities Act Section 5(d) since April 2012. However, these insights are potentially limited by the differences between EGC and non-EGC issuers (including non-EGC issuers that are investment companies) and the offerings they undertake;[71] the voluntary nature of reliance on Section 5(d) among EGC issuers;[72] the potential confounding effects resulting from reliance on other JOBS Act provisions by EGC issuers simultaneously with reliance on test-the-waters accommodations; and the generally favorable market conditions observed in

[66] We also recognize that the benefits of the proposed rule may be more limited for certain issuers in practice, which may make them less likely to use the proposed rule regardless of these factors. *See supra* Section II.E and *infra* Section III.C.5.

[67] For instance, one study found a significant increase in IPO activity, particularly among pharmaceutical and biotechnology companies, in the two years after the JOBS Act enactment (''[c]ontrolling for market conditions, we estimate that the JOBS Act has led to 21 additional IPOs annually, a 25% increase over pre-JOBS levels''). *See* Michael Dambra, Laura Field, & Matthew Gustafson, The JOBS Act and IPO Volume: *Evidence That Disclosure Costs Affect the IPO Decision,* 116 J. Fin. Econ. 121, 121–143 (2015) (''DFG Study''), at 121. The study notes several caveats related to the interpretation of the finding, including that ''the recent sustained bull market makes it impossible to investigate the interaction between the JOBS Act provisions and market conditions'' and that the estimated increase in the annual IPO volume outside biotechnology and pharmaceutical industries is ''small relative to the intertemporal volatility of IPO volume.'' As a result, the authors caution that ''our results should be viewed as preliminary, warranting future research on the topic.'' *See* DFG Study, at 123.

In addition, we note that the confounding effects of other provisions commonly used by EGCs along with testing the waters, such as the ability to confidentially submit a draft registration statement for nonpublic review by the staff of the Commission prior to public filing, makes it difficult to isolate the incremental effect of the availability of testing the waters on IPO activity among issuers eligible for EGC status. *See* DFG Study, at 124 (''[i]n practice, issuers usually combine TTW with a second de-risking provision, allowing EGCs to file their IPO draft registration statement confidentially.'') and Congressional Research Service (2018) Capital Markets, Securities Offerings, and Related Policy Issues (July 26, 2018), *https://crsreports.congress.gov/product/pdf/R/R45221* (''CRS Report''), at 18.

We also note that inferences from studies of EGC issuers may not be directly applicable to non-EGC issuers because non-EGC issuers are different from EGC issuers. *See infra* notes 89–91.

[68] *See supra* note 24.

[69] *See supra* note 28 and accompanying text.

[70] *See supra* notes 29–30 and accompanying text. For instance, some capital raising methods involve sharing material nonpublic information about a contemplated registered securities offering with outsiders who expressly agree to maintain the information in confidence until the deal is publicly disclosed. However, there is an inherent risk that a deal may not be consummated. If the deal fails to go forward, the outside investors will typically remain bound by the confidentiality agreements until the material nonpublic information is either no longer material or publicly disclosed by the issuer.

[71] *See infra* notes 89–91.

[72] *See infra* note 82.

the post-JOBS Act period.[73] Moreover, while the flexibility not to pursue a registered offering after gauging investor interest can be valuable to issuers, we do not have information on issuers that test the waters under the existing rules but subsequently do not proceed with a registered offering.

Below we discuss the potential effects of the proposed rule relative to the economic baseline, which includes existing requirements regarding solicitation of investor interest in connection with registered securities offerings; current practices of EGC issuers related to testing the waters; and information about filers and other parties affected by solicitation requirements.

B. Baseline and Affected Parties

1. Baseline

Section 5(c) of the Securities Act generally prohibits issuers or other persons from offering securities prior to the filing of a registration statement. Once a registration statement has been filed, Section 5(b)(1) generally requires issuers to use a prospectus that complies with Securities Act Section 10 for any written offers of securities. As noted above, Securities Act Section 5(d) nonetheless allows EGCs to engage in test-the-waters communications with QIBs and IAIs both before and after filing the registration statement. Under the current rules, only issuers that qualify for EGC status can rely on a test-the-waters provision in advance of a contemplated registered offering.[74] Registered investment companies are ineligible for EGC status.[75] Permissible test-the-waters solicitations, in oral or written form, may be used before or after the filing of a Securities Act registration statement for an initial or follow-on registered offering.

There is some evidence related to the use of test-the-waters communications by EGC issuers in IPOs. Because disclosure of whether the issuer has tested the waters is not required in the registration statement, studies have used various alternative sources of information to estimate the incidence of test-the-waters communications. Thus, estimates have varied depending on the sources used, the interpretation of references to testing the waters in those sources, and sample construction.[76] Some studies have estimated the incidence of test-the-waters communications by IPO issuers based on issuer responses to staff comment letters associated with IPO registration statement filings.[77] Using this method, recent industry studies found that in 2015 and 2016, respectively, 38% and 23% of EGC IPOs referenced testing the waters in comment letter responses.[78] Based on the analysis of comment letter responses, staff has estimated that approximately 35% of EGC IPOs during 2012–2017 have used the test-the-waters provision.[79] Other studies have estimated the use of the test-the-waters provision based on whether the underwriting agreement mentions allowing the underwriter to test the waters. One academic study found, based on an analysis of underwriting agreements filed as exhibits to registration statements, that approximately 71% of EGC IPOs authorized underwriters to test the waters.[80] Another academic study found that approximately 68% of EGC IPOs authorized underwriters to test the waters or, where information was not available in the underwriting agreement, mentioned testing the waters in comment letter responses.[81] Because underwriting agreement data does not indicate whether the underwriter actually engaged in test-the-waters communications, those estimates are considerably higher than the estimates based solely on staff comment letters. Because estimates based on staff comment letters reference actual use of test-the-waters materials, we believe they are more relevant for the purposes of this baseline analysis.

The practice of testing the waters is voluntary. Today it is used by those EGCs that may be most likely to benefit from it, for example, because of a high level of uncertainty about potential investor demand for their securities offering.[82] The estimated rate of use of the test-the-waters provision has varied by sector, with heavy concentration of EGC IPOs that engaged in testing the waters in the biotechnology, pharmaceutical, technology, media, and telecommunications industries.[83]

2. Affected Parties

We anticipate that the proposed rule would affect issuers, investors, and intermediaries.

i. Issuers

The proposed rule would affect current and potential issuers in contemplated registered securities offerings. While the proposed rule would be available to all issuers, including EGCs, it would particularly affect non-EGC issuers that are not allowed to test the waters under Section 5(d). EGC issuers would remain eligible to rely on Section 5(d). To the extent

[73] *See, e.g.,* Susan Chaplinsky, Kathleen W. Hanley, & S. Katie Moon, *The JOBS Act and the Costs of Going Public,* 55 J. Acct. Res. 795, 795–836 (2017) (''CHM Study''), at 828 (using a three-year period post-JOBS Act and finding that ''with few exceptions, the equity-market conditions of our post-Act sample period have been generally favorable to IPO issuance. We leave to future work how issuers' disclosure decisions and investors' reaction to them may change under less favorable equity market conditions.'') and DFG Study, at 123 (using a two-year period post-JOBS Act and finding that ''the recent sustained bull market makes it impossible to investigate the interaction between the JOBS Act provisions and market conditions. Thus, the effects of the JOBS Act we find could differ in a bear market.'').

[74] *See supra* note 3.

[75] However, BDCs, which are closed-end funds exempt from registration under the Investment Company Act, are eligible for EGC status.

[76] The estimates in the reviewed studies have focused on priced exchange-listed IPOs. As a caveat, information about the use of the test-the-waters provision by issuers that decide not to file a registration statement is not available.

[77] Because only some issuers in follow-on offerings receive staff comment letters, this estimate only applies to IPOs. We note that estimates based on staff comment letters will likely not account for oral test-the-waters communications not involving written materials.

[78] *See supra* note 9. The studies covered a subset of EGC IPOs.

[79] EGC IPOs are identified based on Ives Group's Audit Analytics data on priced offerings. Staff comment letters and responses containing ''Section 5(d)'' and ''testing the waters'' keywords are retrieved from Intelligize and manually classified. Missing or ambiguous responses are supplemented with staff analysis of cover letters submitted by issuers in response to staff reviews of registration statements, where available.

[80] *See* CHM Study, at 820 (Table 6). The statistic is based on 313 EGC IPOs conducted between April 2012 and April 2015.

[81] *See* DFG Study, at 136 (Table 8). The statistic is based on 155 EGC IPOs conducted between April 2012 and March 2014.

[82] Issuers may elect to test the waters if they have high costs of proprietary information disclosure or significant uncertainty about the interest of potential investors in the offering.

According to one law firm study, companies using test-the-waters communications were heavily concentrated in the health care and technology-telecommunications-media sectors. *See* supra note 9.

Another report similarly concluded, based on the experience during the first two years after the JOBS Act was enacted, that the test-the-waters provision may be especially valuable for companies in industries where valuation is uncertain and the timing of the IPO depends on regulatory or other approval (*e.g.,* the biotech and pharmaceutical industries). *See* CRS Report, at 6.

According to one academic study, ''smaller firms, biotech[nology]/pharma[ceutical] firms, and research-intensive firms are more likely to elect the testing-the-waters provision, which is consistent with the JOBS Act lowering the cost of proprietary disclosure.'' *See* DFG Study, at 122. *See also* CHM Study, at 823 for a more general discussion of how the characteristics of EGCs affect their choice to avail themselves of the accommodations available under Title I of the JOBS Act (for example, stating that ''issuers that disclose less information are those that are more likely to have higher proprietary information costs and characteristics that may make them difficult for investors to value''). As a caveat, the cited academic studies generally exclude self-underwritten IPOs, penny stocks, and IPOs that are not listed on an exchange. Therefore, it is unclear if the conclusions would apply to these types of issuers.

[83] *Id.*

that EGC issuers would rely on the proposed rule, the proposed rule would affect such EGC issuers. The proposed rule also would indirectly affect any issuers that do not rely on the proposed rule to the extent that they compete with issuers that rely on the proposed rule for investor capital or in the product market.

We estimate that there were approximately 2,096 EGCs and 8,942 non-EGCs that filed Securities Act registration statements or periodic reports during 2017,[84] excluding ABS issuers and registered investment companies. We estimate that in 2017 there were approximately 1,672 ABS issuers [85] and approximately 12,620 registered investment companies,[86] which were ineligible for EGC status.[87] While EGCs made up a minority of all filers with registration statements declared effective, they accounted for a majority of new issuers in traditional IPOs.[88]

The proposed rule also could affect issuers that are not yet reporting companies but that elect to test the waters as part of exploring the possibility of a future registered securities offering. In addition, because there is no requirement to disclose the use of testing the waters under Section 5(d), we do not have data on EGCs that have tested the waters but have elected not to file a registration statement for the contemplated offering.

In drawing inferences from the experience of EGCs with the use of test-the-waters communications, it is important to recognize that there are considerable differences between an average EGC and an average non-EGC issuer. For example, non-EGC IPO issuers tend to have significantly higher revenues than EGCs due to the size-based eligibility criteria for EGC status.[89] Further, non-EGC issuers include older companies that first issued common equity pursuant to a Securities Act registration statement before December 8, 2011 [90] or that lost their EGC status because more than five fiscal years have elapsed since their first registered common equity sale. Non-EGC issuers also include ABS issuers and registered investment companies, which have unique operational and regulatory characteristics.[91]

ii. Investors

The proposed rule would affect current and potential QIBs and IAIs that might be solicited in conjunction with contemplated registered securities offerings. Due to their portfolio size and/or investment expertise, we expect that such investors have considerable ability to assess investment opportunities and acquire and analyze information about securities and their issuers. Such investors are generally viewed as sophisticated for purposes of private placements, which are often associated with considerably higher information asymmetry than registered offerings. Under Title I of the JOBS Act, EGCs were provided the flexibility to test the waters with these relatively sophisticated investors.

We lack information necessary to estimate the number of QIBs and IAIs that would be solicited in connection with registered offerings under the proposed rule. Because it is not an item of disclosure required of issuers, we do not have information on the number of QIBs and IAIs that were solicited through test-the-waters communications in connection with EGC offerings in reliance on Section 5(d). We also lack data to generate a comprehensive estimate of the overall number of QIBs and IAIs that may be potentially solicited under the proposed rule because disclosure of investor status across all such investors is not required and because we lack comprehensive data that would cover all categories of potential QIBs and IAIs.

For instance, we can gather limited information about certain investors that may be QIBs from EDGAR filings. Based on staff analysis of these filings, we estimate that for calendar year 2017, 6,111 unique filers filed Form 13F on behalf of 6,580 institutional investment managers. However, a number of QIBs, including large institutions that primarily invest in securities other than Section 13(f) securities (*e.g.,* unregistered equity securities; nontraded registered equity securities; or registered non-equity securities),[92] as well as certain types of dealers as specified in Rule 144A will not be captured by this estimate. We similarly lack information for a comprehensive estimate of the overall number of IAIs because disclosure of accredited investor status across all institutional investors is not required and because, while we have information to estimate the number of some categories of IAIs (some of which may also be included in the Form 13F estimate), we lack comprehensive data that would allow us to estimate the unique number of investors across all categories of IAIs under Rule 501.[93]

In addition to QIBs and IAIs, other investors may be indirectly affected by

[84] The estimate is based on the number of unique filers of registration statements on Form S–1, S–3, S–4, S–11, F–1, F–3, F–4, or F–10, or periodic reports on Form 10–K, 10–Q, 20–F, or 40–F, or amendments to them, during calendar year 2017, as well as any BDCs included in the SEC's September 2017 BDC report at *https://www.sec.gov/open/datasets-bdc.html.* The BDC report does not exclude filers that have not yet begun selling shares to the public or filers that have ceased operations but have not yet withdrawn their registration statement or election to be regulated as a BDC. EGCs are identified as of the end of 2017 based on Ives Group's Audit Analytics data. We include filers of periodic reports because the proposed rule is available to seasoned issuers that have already become reporting companies.

[85] The estimate is based on the number of unique CIKs with ABS-related filings during calendar year 2017 (ABS–15G, ABS–EE, SF–1, SF–3, 10–D, or amendments to them). The estimate is not limited to ABS issuers that filed annual reports.

[86] We estimate that there are 9,360 mutual funds, 1,821 exchange-traded funds (1,829 ETFs less 8 UIT ETFs), 711 closed-end funds, 5 variable annuity separate accounts registered as management investment companies on Form N–3 (covering 14 investment options), and 724 UITs (predominantly variable annuity separate accounts registered as UITs on Form N–4 and Form N–6). *See* Release No. 33–10506 (Jun. 5, 2018) [83 FR 29158], at 29184, fn. 342 and accompanying text and Release No. 33–10569 (Oct. 30, 2018) [83 FR 61730], at 61733, fn. 23. This estimate is not limited to registered investment companies that filed annual reports.

[87] *See* Jumpstart Our Business Startups Act Frequently Asked Questions: Generally Applicable Questions on Title I of the JOBS Act, *https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm* (''JOBS Act Title I FAQs'').

[88] Based on Ives Group's Audit Analytics data, during calendar year 2017, EGC issuers accounted for approximately 187 out of 212, or approximately 88%, of priced exchange-listed IPOs (excluding deals identified as mergers, spin-offs, or fund offerings). During the period from April 5, 2012 through December 31, 2017, EGC issuers accounted for approximately 1,018 out of 1,183, or approximately 86% of such IPOs.

[89] For example, one study comparing a subset of exchange-listed EGC IPOs to exchange-listed non-EGC IPO controls noted that ''[a] high percentage of EGCs are unprofitable and substantially younger than the control sample and the majority of these IPOs occur in only two industries—biotech[nology] and pharmaceuticals—that have limited near-term prospects and little revenue to recognize.'' *See* CHM Study, at 828. *See also* DFG Study, at 127 and 129 (Table 3).

[90] An ''issuer shall not be an emerging growth company for purposes of [the Securities Act and the Exchange Act] . . . if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.'' *See* JOBS Act Title I FAQs.

[91] *See id.*

[92] Form 13–F must be filed only by institutional investment managers that exercised investment discretion over $100 million in Section 13(f) securities. ''Section 13(f) securities'' are equity securities of a class described in Section 13(d)(1) of the Exchange Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. *See* Form 13F and Rule 13f–1(c) under the Exchange Act.

[93] In addition, Form ADV filers report information about the number of clients of different types, such as pooled investment vehicles, banking institutions, corporations, charities, pension plans, *etc.,* some of which are potential IAIs. However, the data available to us does not allow identification of unique clients (to account for cases where a client has multiple advisers) or IAIs that do not retain services of a Form ADV filer.

the proposed rule, as discussed in Section III.C below. For example, the proposed rule could increase the shareholder value of affected issuers by lowering the cost of raising capital or enabling issuers to pursue a more efficient capital raising strategy, which would benefit existing investors in these issuers. Furthermore, the proposed rule could encourage additional registered securities offerings. Due to data availability, we cannot estimate the number of investors that might be affected by such indirect benefits. According to a recent study based on the 2016 Survey of Consumer Finances, approximately 65 million households owned stocks directly or indirectly (through other investment instruments).[94]

iii. Intermediaries

Similar to Section 5(d), proposed Rule 163B would permit the issuer, or any person authorized to act on behalf of an issuer, to engage in test-the-waters communications. EGC issuers commonly authorize underwriters to engage in test-the-waters communications on their behalf with prospective investors.[95] Thus, the proposed rule would potentially affect such underwriters or other third parties engaged in a similar role.

We estimate that there were approximately 958 registered broker-dealers that reported being underwriters or selling group participants for corporate securities in 2018.[96] We do not have data on how many underwriters actually engaged in test-the-waters communications in connection with offerings on behalf of EGCs. Further, we lack data on other persons that have engaged in test-the-waters communications on behalf of EGCs. With respect to persons who could be authorized to act on behalf of fund issuers, we estimate that approximately 280 registered broker-dealers reported being mutual fund underwriters or sponsors in 2018 (of which approximately a quarter also reported being underwriters for corporate securities).[97] We anticipate that fund advisers also might engage in test-the-waters communications on behalf of the funds they advise. We estimate that there are approximately 1,831 investment advisers to registered investment companies and approximately 109 investment advisers to BDCs.[98] We do not have data to predict how many of these fund intermediaries would actually engage in test-the-waters communications, or how many additional persons authorized to act on behalf of a fund issuer might participate in test-the-waters communications related to fund offerings under the proposed rule.

C. Anticipated Economic Effects

Below we evaluate the anticipated costs and benefits of the proposed rule and the anticipated effects of the proposed rule on efficiency, competition, and capital formation.

On a market-wide basis, providing the option to test the waters to all issuers is expected to improve the efficiency and lower the cost of implementing the capital raising strategy for issuers considering a registered securities offering.[99] While EGC issuers would also be permitted to rely on proposed Rule 163B, non-EGC issuers are expected to be most affected by the proposed rule because they cannot rely on Section 5(d).

1. Potential Benefits to Issuers

Expanding the availability of test-the-waters communications could improve the likelihood of successfully raising capital in a registered offering and enable a more efficient and potentially lower-cost capital raising process. Specifically, testing the waters could help issuers gauge market interest in a potential offering, determine the categories of investors with the most favorable assessment of the issuer, as well as identify the potential concerns and questions that prospective investors may have regarding the offering and its terms. By gathering this information, issuers may reduce the risk of having to withdraw a publicly filed registration statement and can also tailor offering size and other terms included in the initial filing more closely to market interest.

We expect the greatest benefit of testing the waters to be realized by issuers that solicit investors before public filing. As discussed below, testing the waters before public filing enables issuers to lower the risk of proprietary information disclosure and possibly to avoid incurring the cost of preparing a registration statement. However, testing the waters after public filing may also benefit some issuers.[100] Specifically, the option to test the waters can benefit the issuers affected by the proposed rule in several ways:

- In the case of issuers that decide after testing the waters not to proceed with a registered securities offering, testing the waters before a public registration statement filing decreases the risk of public disclosure of sensitive or proprietary information about the issuer to competitors (to the extent that the communications are not subject to Regulation FD).[101]

[94] *See* Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, Sarah Pack, John Sabelhaus, Jeffrey Thompson, & Richard A. Windle, *Changes in U.S. Family Finances from 2013 to 2016: Evidence From the Survey of Consumer Finances,* 103 Fed. Res. Bull. 1, 1–42 (2017), at 20, *https://www.federalreserve.gov/publications/files/scf17.pdf.* The proposed test-the-waters provision could be used irrespective of security type, so the overall set of potentially indirectly affected investors is likely to be larger.

[95] *See supra* notes 80–81 and accompanying text.

[96] This estimate is based on Form BD filings as of October 2018.

[97] *Id.* Form BD does not separately elicit underwriting activity for other types of funds, so more detailed information about the number of broker-dealers that underwrite those funds' offerings is not available to us.

[98] This estimate is based on Form ADV filings as of October 2018.

[99] *See, e.g.,* Treasury Report, at 30 (stating that ''[w]hen combined with the ability to file a registration statement confidentially with the SEC, testing the waters reduces the company's risk associated with an IPO. The company has a better gauge of investor interest prior to undertaking significant expense and, in the event the company elects not to proceed with an IPO, information has been disclosed only to potential investors and not to the company's competitors.'') *See also* SIFMA Report, at 10–11.

[100] In the context of Regulation A, the Commission determined that issuers may benefit from broad flexibility to test the waters both before and after public filing. For example, in the 2015 adopting release amending Regulation A, the Commission stated: ''Allowing test-the-waters communications at any time prior to qualification of the offering statement, rather than only prior to filing of the offering statement with the Commission, may increase the likelihood that the issuer will raise the desired amount of capital. This option may be useful for smaller issuers, especially early-stage issuers, first-time issuers, issuers in lines of business characterized by a considerable degree of uncertainty, and other issuers with a high degree of information asymmetry.'' *See* Regulation A Adopting Release, at 21882.

[101] Several factors may serve to limit this benefit for some issuers. First, communications under the proposed rule could be subject to Regulation FD. *See supra* note 28.

Second, issuers may already request confidential treatment for proprietary information they file with registration statements, subject to the provisions of 17 CFR 230.406 (''Rule 406'').

Third, the extension of the option to confidentially submit a draft registration statement to non-EGC issuers has reduced the risk of proprietary information disclosure to competitors prior to an issuer deciding to proceed with the public filing of a registration statement for an IPO or a registered Securities Act offering, or registration of a class of securities pursuant to Exchange Act Section 12(b), within one year after an IPO. Beginning July 10, 2017, staff extended the option of confidential submission of a draft registration statement to most non-EGC issuers. *See* Draft Registration Statement Processing Procedures Expanded, June 29, 2017, *https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded,* and Voluntary Submission of Draft Registration Statements—FAQs, *https://www.sec.gov/corpfin/voluntary-submission-draft-registration-statements-faqs.* Separately, draft registration statement procedures were expanded to non-EGC BDCs in 2018. *See*

• In the case of issuers that decide after testing the waters not to proceed with a registered securities offering, testing the waters before the registration statement filing can save such issuers some or all of the cost of preparing and publicly filing a registration statement.

• Testing the waters, particularly before the registration statement filing, can reduce the risk of miscalculating market interest in the offering and having to withdraw the offering, thus reducing potential reputational costs.

• Testing the waters, particularly before the registration statement filing, can help issuers gauge investor demand for purposes of determining offering size and other terms, potentially resulting in a more efficient offering process and a higher likelihood of selling the offered amount more quickly.[102]

According to one academic study of EGC IPOs, the option to test the waters ''reduces the cost of IPO withdrawal because it allows issuers to disclose information exclusively to investors, but not competitors, until the IPO becomes likely to succeed. This would especially benefit issuers with high proprietary disclosure costs.'' [103] The study also notes that testing the waters ''provides issuers with more certainty regarding the prospects of the IPO before publicly filing with the SEC.'' [104]

In addition, for issuers that elect to proceed with a registered offering, testing the waters may serve as an element of their marketing strategy by allowing them to inform solicited investors about a potential future offering. However, the marketing benefit to such issuers would be limited because communications are only permitted with QIBs and IAIs and investors are not permitted to commit capital at the test-the-waters stage.

Similarly, some fund issuers could use test-the-waters communications to gather information about investors' interest in a particular investment strategy or fee structure or to market a potential future offering. However, as discussed in greater detail in Section III.C.5 below, such benefits may be limited for most funds. To the extent that the proposed rule facilitates the registered offering process and potentially lowers its costs and risks for some issuers, the availability of testing the waters might facilitate capital formation through registered securities offerings, particularly for non-EGC issuers that are ineligible for test-the-waters provisions of Section 5(d). In evaluating the potential benefits of expanded test-the-waters communications under the proposed rule for capital formation, we acknowledge that the issuers affected by the proposed rule already have the flexibility to solicit the same categories of investors in connection with private placements. Nevertheless, even if the net level of capital formation is unchanged, due to affected issuers switching from private placements to registered offerings, the added flexibility under the proposed rule might enable issuers to adopt the most efficient and lowest-cost capital raising strategy.

To the extent that the proposed rule encourages additional issuers to conduct a registered securities offering, issuers may benefit from greater liquidity associated with registered securities, compared to exempt securities, to the extent that greater liquidity makes the issuers' securities potentially more attractive to prospective investors. Any additional issuers that elect to conduct a registered offering in part as a result of the proposed rule also may benefit from the greater ease of raising follow-on financing through future registered offerings.

2. Potential Costs to Issuers

Issuers that elect to test the waters under the proposed rule might incur costs, including the cost of identifying QIBs and IAIs; holding events with QIBs and IAIs to engage in testing the waters; developing test-the waters solicitation materials; indirect costs of potential disclosure of proprietary information to solicited investors (albeit to a limited number of prospective investors); and in some instances, potential legal costs associated with liability arising from test-the-waters communications with prospective investors.[105] Further, communications made pursuant to the proposed rule may be subject to Regulation FD. Because the use of test-the-waters communications would remain voluntary under the proposed rule, we anticipate that issuers would elect to rely on test-the-waters communications only if the benefits anticipated by issuers outweigh the expected costs to issuers.

3. Potential Benefits to Investors

To the extent that the proposed rule encourages additional issuers to conduct a registered securities offering, a broader set of investors might more efficiently allocate capital among issued securities. These efficiency benefits are more likely to accrue to non-accredited investors, which are more limited in their ability to invest in securities issued in exempt offerings. Further, to the extent that additional issuers consider a registered securities offering instead of a private placement as a result of the proposed rule, investors that would otherwise have invested in unregistered securities of the same issuer might benefit from greater liquidity of registered securities (because resales of such securities would not be restricted and such securities are more likely to have a secondary market). Investors also would benefit from the availability of disclosure and market information about registered securities (resulting in more informationally efficient prices and potentially better informed investment decisions). By increasing shareholder value of affected issuers through cost savings and improved ability to raise external financing, the proposed rule also could benefit existing shareholders of affected issuers.

Test-the-waters communications might offer some prospective investors the potential benefit of additional time to evaluate, understand, and ask questions about potential investment opportunities before the public filing of a registration statement. To the extent that such communications might provide solicited QIBs and IAIs with valuable early information about potential investment opportunities, these communications might enhance the ability of solicited QIBs and IAIs to assess the quality of future investment opportunities, and in some instances, potentially facilitate better informed future investment decisions and efficient allocation of capital. In the context of the proposed rule, such potential informational advantages would be limited by several factors. First, because extensive information about the issuer and the offering must be disclosed in a publicly filed registration statement, should an issuer decide to proceed with an offering, the

Expanded Use of Draft Registration Statement Review Procedures for Business Development Companies, ADI 2018–01, *https://www.sec.gov/investment/adi-2018-01-expanded-use-draft-registration-statement-review-procedures-business.*

[102] It is difficult to assess the extent to which test-the-waters communications after the initial filing incrementally would help issuers gauge the demand of QIBs and IAIs as some of these issuers might have obtained similar information about investor demand through the bookbuilding process. We expect that issuers that find test-the-waters communications to be most beneficial would elect to undertake such communications.

[103] *See* DFG Study, at 122.

[104] *See* DFG Study, at 124.

[105] In addition, similar to Section 5(d), the proposed rule would not modify existing rules on solicitation in conjunction with private placements. The Commission's 2007 framework for analyzing how an issuer can conduct simultaneous registered and private offerings would continue to apply. *See Revisions of Limited Offering Exemptions in Regulation D,* Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116 (Aug. 10, 2007)].

incremental value of the information conveyed to solicited investors through test-the-waters communications might be small. Second, to the extent that potential issuers newly eligible for testing the waters under the proposed rule would have otherwise provided similar information to QIBs and IAIs in the course of seeking private financing, such potential informational benefits could be reduced. Third, potential informational benefits to solicited investors likely would be smaller for issuers in follow-on offerings (to the extent that issuers have provided disclosures in an IPO registration statement and subsequent Exchange Act reports). Further, communications made pursuant to the proposed rule may be subject to Regulation FD. Finally, even if solicited investors view the potential offering as an attractive investment opportunity on the basis of test-the-waters communications, there is no assurance that an issuer will proceed with an offering, and no investors can invest in the offering until a registration statement has been declared effective.

4. Potential Costs to Investors

If issuers with a traded class of securities test the waters in conjunction with a potential follow-on offering, solicited investors might potentially use the resulting information advantage to realize trading profits at a cost to investors that were not solicited. However, this possibility may be partly mitigated by (1) the requirement that Exchange Act reporting companies disclose specified information in periodic and current reports and (2) the general applicability of Exchange Act Section 10(b) and Rule 10b–5. Further, communications made pursuant to the proposed rule may in some circumstances be subject to Regulation FD, as discussed in Section III.A above.

Selective solicitation of QIBs and IAIs may result in some institutional investors having a relatively greater influence on the offering process and terms, which might potentially place investors that are not solicited at a relative competitive disadvantage. This incremental effect of test-the-waters communications may be less likely to the extent that test-the-waters communications do not involve a mechanism for a credible commitment of capital. Thus, any expressions of interest are likely to be preliminary in nature. Further, similar differences in investor influence might emerge in the course of the book building process in the absence of test-the-waters communications, or in the course of a private placement if the issuer chooses to forgo a registered offering.

The proposed expansion of permissible test-the-waters communications also might result in costs to solicited investors, including potentially less-informed decisions or less efficient capital allocation, if test-the-waters communications contain incomplete or misleading information and if solicited investors improperly rely on test-the-waters communications, and not on the filed offering materials, in their investment decisions.

We expect that any such potential adverse effects on solicited investors might be mitigated by the following factors:

- The issuer would be required to publicly file a registration statement once it determines to proceed with a public offering, enabling solicited investors to review the filed offering materials and to obtain full information about the issuer and the offering before investing. This should serve as a crucial deterrent against the potential for misleading test-the-waters communications at the pre-filing stage because we expect that a QIB or IAI would verify the claims made as part of test-the-waters communications against the complete set of disclosures in the registration statement, which is subject to liability under Section 11 of the Securities Act.
- Test-the-waters communications would be permitted only with QIBs and IAIs. Although the level of investor sophistication may vary across such investors (for example, it may be relatively higher for the larger QIBs and IAIs, which are likely to have more investment and due diligence expertise than the relatively smaller QIBs and IAIs), QIBs and IAIs generally are expected to have a sophisticated ability to process investment information and to review the offering materials, once those materials are filed, before making an investment decision.
- Because test-the-waters communications represent an offer of securities, although they would not be subject to liability under Section 11 of the Securities Act, they would remain subject to general anti-fraud provisions under the Securities Act and the Exchange Act and to liability under Section 12(a)(2) of the Securities Act.[106] In addition, the associated risk of private securities litigation may further reduce incentives to engage in misleading test-the-waters communications.
- If an issuer proceeds with an offering, written test-the-waters materials generally may be subject to staff review.[107]
- Reputational concerns of underwriters and/or issuers that may expect to participate in future offerings with the same institutional investors on future deals may reduce the incentives to engage in misleading test-the-waters communications with these investors.
- To the extent that test-the-waters communications are used by issuers in follow-on registered offerings, solicited investors can access the issuers' past filings of registration statements and Exchange Act reports to aid in the interpretation and verification of information in test-the-waters communications.
- The proposed rule might be less likely to be relied upon by micro-cap firms, which are linked to a higher risk of such fraud, because institutions tend to have smaller stakes in such issuers.[108]

In evaluating any potential adverse effects of the risk of incomplete or misleading test-the-waters communications under the proposed rule on solicited QIBs and IAIs, it is important to recognize that issuers already have the ability to solicit accredited investors in connection with private placements, which are associated with substantially less disclosure and less extensive investor protections and regulatory oversight. Issuers unable to meet their external financing needs through registered offerings commonly sell securities to IAIs and other accredited investors through private placements. To the extent that the expansion of permissible test-the-waters communications under the proposed rule induces some issuers to elect a registered offering instead of a private placement, the amount of disclosure and the level of investor

[106] Some states also may impose blue-sky restrictions on pre-offering communications related to non-exchange-listed securities offerings.

[107] Based on a review of staff comment letters issued in connection with IPO registration statements of EGCs during 2012–2017 identified through Intelligize data, comment letters commonly request issuers to submit to the staff for review any written test-the-waters communications in reliance on Section 5(d). *See also supra* Section II.A.

[108] For example, institutional ownership is negatively related to firm size among listed stocks. *See, e.g.,* Stefan Nagel, *Short Sales, Institutional Investors and the Cross-Section of Stock Returns,* 78 J. Fin. Econ. 277, 277–309 (2005), Table 1 (correlation between institutional ownership and logarithm of market capitalization is 0.53). Another study finds, among other results, lower post-IPO institutional ownership for IPO issuers with lower filing prices. *See* Chitru S. Fernando, Srinivasan Krishnamurthy, & Paul A. Spindt, *Are Share Price Levels Informative? Evidence from the Ownership, Pricing, Turnover, and Performance of IPO Firms,* 7 J. Fin. Markets 377, 377–403 (2004), Table 2 (filing price has a positive effect on institutional ownership). As a caveat, these studies focus on listed stocks and do not capture smaller institutional owners.

protection afforded to the investors in the issuer's securities would be expected to increase.

5. Variation in Economic Impact Due to Issuer Characteristics

The described economic effects of the proposed rule are expected to vary as a function of issuer and offering characteristics and investors' ability to process information. The incremental benefits of the proposed rule are expected to be smaller for large [109] and well-established issuers with low information asymmetries and a history of public disclosures, issuers of securities with low information sensitivity (*e.g.,* straight investment-grade debt), and issuers in follow-on offerings with an established track record of capital raising. Issuers whose communications with investors may be subject to Regulation FD are less likely to benefit from the proposed rule.[110] In addition, issuers with low costs of proprietary disclosure (*e.g.,* low R&D intensity and limited reliance on proprietary technology) may be less likely to benefit from the proposed rule. In turn, due to greater market scrutiny and lower information asymmetries associated with such issuers, the potential of such issuers' test-the-waters communications to bias investor ability to assess the offering is also expected to be small. All else equal, issuers that predominantly market their offerings to individual investors or non-accredited institutional investors, including many registered investment companies,[111] might realize relatively smaller benefits from the proposed rule, which only allow test-the-waters communications with QIBs and IAIs. Further, issuers relying upon other rules that permit offering-related communications may be less likely to benefit from the proposed rule.[112]

In contrast, other types of issuers might realize relatively greater benefits from expanded testing the waters under the proposed rule. Because proposed Rule 163B mitigates the risk of competitors learning potentially valuable proprietary information about the issuer's financing needs, business, products, and R&D, it is expected to particularly benefit issuers with high costs of proprietary disclosure (*e.g.,* issuers in R&D-intensive industries, such as life sciences and technology). In addition, issuers not subject to Regulation FD are more likely to benefit from the proposed rule.[113] As described above, test-the-waters communications offer a low-risk, low-cost way of obtaining information about investor interest in a potential registered offering and evaluating whether such an offering could be successful. Thus, the flexibility to test the waters under the proposed rule is expected to be most valuable for issuers that have greater uncertainty about the interest of prospective investors in the offering, investor valuation of the issuer's securities, and investor concerns and questions about the issuer's business or the planned offering, in particular, IPO issuers, small and development-stage issuers with limited operating history and high information asymmetries, and issuers of securities with high information sensitivity (*e.g.,* equity, convertible debt, speculative-grade straight debt) and securities with difficult to value, complex payoffs (*e.g.,* structured finance products and other innovative financial instruments). At the same time, due to lower market scrutiny applied to such issuers, higher information asymmetries or greater complexity of valuing such securities, the potential of test-the-waters communications to bias investor ability to assess information about the offering might be relatively higher.[114] All else equal, issuers that predominantly market their offerings to institutional investors are expected to realize relatively greater benefits from the expansion of test-the-waters communications with QIBs and IAIs.[115]

The proposed rule would be available to a number of issuers that are not currently eligible to engage in test-the-waters communications under section 5(d) of the Securities Act, including registered investment companies, non-EGC BDCs, and ABS issuers. The extent of reliance of such issuers on test-the-waters communications under the proposed rule is difficult to predict. Generally, as discussed above, testing the waters might be relatively more valuable for issuers with a largely institutional investor base, issuers with high information asymmetries, and issuers of information-sensitive securities and securities with complex payoffs. To the extent that funds on average have a high share of retail rather than institutional ownership, those benefits would likely be limited for funds.[116] Further, as discussed in Section II.E above, with respect to registered investment companies, a fund typically would register as an investment company and conduct an exempt or registered offering within a relatively short period of time after it is organized. If a fund is contemplating a registered offering at the time of its organization, we recognize it is common practice to simultaneously file a registration statement under both the Investment Company Act and the Securities Act to take advantage of certain efficiencies. To the extent that investment companies required to register under the Investment Company Act continue this practice of simultaneously filing registration statements under the Securities Act and the Investment Company Act, such funds would be less likely to benefit from the option to undertake test-the-waters communications prior to a public registration filing.[117] Since a BDC is not required to register under the Investment Company Act, it may to some extent be more likely to benefit from the proposed rule with respect to pre-filing communications.

Some funds that preliminarily engage in exempt offerings, including certain

[109] At the same time, it is possible that large private issuers have a more complex business structure and may realize a greater benefit from test-the-waters communications with QIBs and IAIs. *See supra* note 9.

[110] *See supra* note 27.

[111] *See infra* note 116.

[112] *See supra* Section II.D. For example, WKSIs may elect to rely on Rule 163. We estimate that there were approximately 3,786 WKSIs that filed Securities Act registration statements or Exchange Act periodic reports in 2017, based on the analysis of filings of automatic shelf registration statements and XBRL data in periodic reports during calendar year 2017. *See also supra* note 53 and accompanying text.

[113] *See supra* note 28.

[114] In the 1995 Proposal, the Commission excluded blank check and penny stock issuers ''because of the substantial abuses that have arisen in such offerings.'' See 1995 Proposing Release. However, the 1995 Proposal did not impose restrictions on investors to whom test-the-waters communications may be directed. In contrast, the proposed rule is limited to QIBs and IAIs, which are expected to have a high level of sophistication in processing investment information.

[115] However, certain characteristics of such issuers (size, exchange listing approval, more established track record, low information asymmetry) that attract institutional investors may reduce the value of testing the waters.

[116] The vast majority (89%) of mutual fund shares are estimated to be held through retail accounts. The mean institutional holding is estimated to be approximately 45% for exchange-traded funds and 21% for registered closed-end funds. *See Covered Investment Fund Research Reports,* Release No. 33–10580 (Nov. 30, 2018) [83 FR 64180, 64199 (Dec. 13, 2018)]. Therefore, among registered investment companies, mutual funds may be least likely to rely on the proposed rule because they have the highest share of retail ownership. BDCs, which are closed-end funds exempt from registration under the Investment Company Act, have an estimated mean institutional holding of approximately 30%, so the benefits of the proposed rule may be similarly limited for some BDCs. *See id.*

[117] While a registered investment company could engage in test-the-waters communications for a limited period of time after making a notice filing to become a registered investment company and before filing an Investment Company Act registration statement (generally three months), the benefits of such communications may be diminished since the registered investment company is obligated to file an Investment Company Act registration statement regardless of whether it conducts an exempt or registered offering. *See* 17 CFR 270.8b–5.

registered closed-end funds and BDCs, could rely on the proposed rule to engage in pre-filing communications if they are considering a subsequent registered offering. In addition, funds could realize benefits from relying on proposed Rule 163B for post-filing communications. The proposed rule would allow funds to communicate with QIBs and IAIs about a contemplated offering without complying with the requirements of Section 24(b) of the Investment Company Act or Rules 482 or 34b–1, including the associated filing, disclosure, and legending requirements, which could result in potentially lower costs and greater flexibility for funds seeking to engage in post-filing communications with QIBs and IAIs.

6. Variation in Economic Impact Due to Investor Characteristics

The composition of QIBs and IAIs solicited in conjunction with an issuer's planned offering also might affect the economic impact of the proposed rule. Testing the waters with QIBs and IAIs that have more investment and due diligence expertise might yield more valuable information to issuers, and such investors might be less susceptible to biased information if any is presented while testing the waters. In turn, the presence of QIBs and IAIs with relatively less investment and due diligence expertise might decrease the value of information obtained from investors through test-the-waters communications and might increase the risk of test-the waters communications biasing the ability of solicited investors to adequately assess the offering.

To the extent that certain categories of issuers, including funds, may be less likely to rely on the proposed rule, those QIBs and IAIs that mainly invest in the securities of such issuers may be less affected by the proposed rule.

As a general consideration, the provisions of proposed Rule 163B mostly follow the provisions of the existing Section 5(d) accommodation. Such harmonization of permissible test-the-waters communications across all issuers is expected to minimize confusion among potential investors regarding permissible solicitation of investor interest before registered offerings, irrespective of the issuer's EGC status.

If adopted, the rule would require that the solicited investor is, or that the issuer reasonably believes the investor to be, a QIB or IAI. The reasonable belief provision is expected to reduce the risk for issuers of inadvertently violating the conditions of testing the waters while maintaining a low likelihood that less sophisticated investors are solicited. Proposed Rule 163B does not specify steps that an issuer could or must take to establish a reasonable belief regarding investor QIB or IAI status or otherwise require the issuer to verify investor status, as in Rule 506(c) of Regulation D. This is expected to benefit issuers by allowing issuers the flexibility to use methods that are cost-effective but appropriate in light of the facts and circumstances of each contemplated offering and each potential investor. To the extent that the reasonable belief provision as proposed results in some investors that are not QIBs or IAIs being solicited, less sophisticated investors may be solicited, which may result in less informed investment decisions by some of those investors. These effects are expected to be partly mitigated by the factors discussed in Section III.C.4 above.

D. Reasonable Alternatives

We evaluate reasonable alternatives to the proposed rule and their anticipated economic effects below. The proposed rule would provide the option to engage in test-the-waters communications to all issuers. The conditions of proposed Rule 163B would be generally similar to the requirements presently applicable to EGC issuers under Section 5(d). As an alternative, we could apply different requirements to test-the-waters communications under proposed Rule 163B. Compared to the proposed rule, applying less extensive (more extensive) requirements to test-the-waters communications under the proposed rule would increase (decrease) the benefits related to the level, efficiency, and cost of capital raising for issuers that would have sought to test the waters under the proposed rule. Further, compared to the proposed rule, applying more extensive requirements to test-the-waters communications under proposed Rule 163B could place non-EGC issuers at a relative competitive disadvantage to EGC issuers, which would remain eligible to test the waters under Section 5(d). The effects specific to individual reasonable alternatives are discussed in greater detail below.

If adopted, the rule would permit all issuers to test the waters. As an alternative, the proposed rule could exclude certain categories of issuers,[118] such as blank check issuers,[119] penny stock issuers,[120] ABS issuers,[121] or all or some registered investment companies.[122] If some solicited investors make less informed decisions as a result of test-the-waters communications by these categories of issuers, the alternative of excluding these categories of issuers might potentially result in more efficient investor decisions compared to the proposed rule. However, because solicited investors can review the registration statement in addition to any test-the-waters communications prior to investing and because QIBs and IAIs generally have a high level of sophistication in processing information, as well as in light of the other considerations discussed in Section III.C.4 above, this concern is likely to have a minor impact, if any. To the extent that these categories of issuers would have elected to test the waters under the proposed rule, this alternative would not allow such issuers to realize the benefits of the proposed rule (*e.g.,* potentially more efficient and lower cost of capital raising), particularly non-EGC issuers ineligible under Section 5(d). To the extent that some of these issuers may be less likely to rely on proposed Rule 163B as discussed in Section III.C.5 above, the effects of excluding them from proposed Rule 163B would be more limited.

Similar to Section 5(d), the proposed rule would permit solicitation of investor interest both before and after the filing of a registration statement. As an alternative, the proposed rule could permit issuers to test the waters only

[118] In the 1995 Proposal, the Commission excluded registered investment companies, ABS issuers, partnerships, limited liability companies and other direct participation investment programs because they might be ''unsuited to a 'test the waters' concept, given the complex and contractual nature of the issuer.'' Further, blank check and penny stock issuers were excluded ''because of the substantial abuses that have arisen in such offerings.'' However, the 1995 Proposal would have allowed testing the waters with all investors, not just QIBs or IAIs. *See* 1995 Proposing Release. Title I of the JOBS Act, enacted in 2012, did not limit the availability of Section 5(d) to EGCs on the basis of blank check or penny stock issuer status.

[119] Approximately 213 issuers that had filed a report on Form 10–K, 10–Q, 20–F, or 40–F, or a registration statement on Form S–1, S–3, S–4, S–11, F–1, F–3, F–4, or F–10, or amendment to it, during calendar year 2017, were estimated to be blank check issuers based on Ives Group's Audit Analytics and OTC Markets data as of the end of 2017 and XBRL data in filings made during calendar year 2017. Based on Ives Group's Audit Analytics data as of the end of 2017, among those, approximately 80% were EGCs. Blank check issuer status was determined based on having SIC code 6770.

[120] Approximately 1,418 issuers that had filed a report on Form 10–K, 10–Q, 20–F, or 40–F, or a registration statement on Form S–1, S–3, S–4, S–11, F–1, F–3, F–4, or F–10, or amendment to it, during calendar year 2017 had at least one class of shares trading on the OTC Market at a closing price below $5 based on OTC Markets data as of the end of 2017. Based on Ives Group's Audit Analytics data as of the end of 2017, among those, approximately 38% were EGCs.

[121] *See supra* note 85.

[122] *See supra* note 86 and *supra* Section II.E.

before or only after the public filing of the registration statement. Compared to the proposed rule, this alternative would afford less flexibility to affected issuers, and fewer potential benefits for the level, efficiency, and cost of capital raising for affected issuers, particularly non-EGC issuers ineligible under Section 5(d).[123]

Similar to Section 5(d), the proposed rule would not require issuers to publicly file test-the-waters communications, nor would it require the use of legends. As an alternative, the proposed rule could require issuers to include certain legends or to file test-the-waters communications with the registration statement. Compared to the proposed rule, the alternative of requiring legends on test-the-waters communications under the proposed rule could impose small incremental costs on issuers. However, given the investment and due diligence expertise of QIBs and IAIs, such an alternative likely would not result in significant additional benefits compared to the proposed rule. Compared to the proposed rule, the alternative of requiring the filing of test-the-waters materials could impose additional costs on issuers that elect to test the waters under proposed Rule 163B (including the direct cost of filing additional exhibits and, in instances where test-the-waters materials contain proprietary information, the disclosure of which could cause competitive harm, potential costs of requesting confidential treatment for that information pursuant to Securities Act Rule 406, or alternatively, the risk of disclosure of proprietary information to competitors in instances where confidential treatment of test-the-waters communications is not requested, or requested but not granted). This alternative also could decrease the benefits for the level, efficiency, and cost of capital raising for affected issuers, particularly non-EGC issuers ineligible under Section 5(d). Compared to the proposed rule, by subjecting test-the-waters communications to Section 11 liability applicable to registration statements, this alternative could improve the accuracy of information provided as part of test-the-waters communications. However, this benefit is expected to be limited by the factors discussed in Section III.C.4 above, including the ability of investors to review the information in the registration statement before investing; the general sophistication of QIBs and IAIs in processing investment information; and the applicability of Section 12(a)(2) liability and general anti-fraud provisions to test-the-waters communications. Compared to the proposed rule, filing test-the-waters materials with the registration statement under this alternative could offer informational benefits to investors that have not been solicited. However, such benefits, compared to the proposed rule, are likely minimal because issuers already are required to disclose extensive information in a registration statement and because issuers would retain the option to request confidential treatment for proprietary information in such exhibits, subject to the provisions of Rule 406, under this alternative. Further, in certain circumstances, communications under the proposed rule may be subject to Regulation FD, as discussed in Section III.A above.

Similar to Section 5(d), if adopted, the rule would permit issuers to test the waters only with QIBs and IAIs. As an alternative, the proposed rule could permit issuers to test the waters with all investors.[124] This alternative might benefit issuers, particularly issuers whose offerings attract investors that are neither QIBs nor IAIs, by providing additional flexibility and enabling issuers to reduce the costs of a registered offering. This alternative could therefore facilitate capital formation efforts of such issuers. At the same time, by exposing individual and small institutional investors to pre-offering information that is not required to be publicly filed and is not subject to Section 11 liability, this alternative might decrease investor protection to the extent that some of the solicited individual and small institutional investors might be susceptible to misleading test-the-waters communications. This concern is expected to be partly mitigated by the ability of all investors to review the filed registration statement, in addition to any test-the-waters communications, prior to investing, as well as other factors discussed in Section III.C.4 above. However, to the extent that individual and small institutional investors are less sophisticated than QIBs and IAIs and may fail to review the information in the registration statement, this alternative may result in less informed investment decisions by such investors.

Similar to Section 5(d), the rule, if adopted, would not restrict issuers from relying on other communications provisions, such as Rules 163 or 255 under the Securities Act (depending on the nature and timing of the communication and the issuer's ability to meet the eligibility and other rule requirements). Those rules contain investor safeguards specific to the circumstances in which such communications are permitted. As an alternative, we could have restricted issuers relying on the proposed rule from engaging in other communications under the existing rules. Compared to the proposed rule, this alternative would restrict the ability of issuers to tailor their solicitation strategy to their needs, which might result in decreased capital formation and a less efficient or costlier capital raising process for some issuers, without a corresponding benefit to investors. For example, issuers might have to choose between incurring costs of early public disclosure of a contemplated offering and forgoing the option of subsequent offering-related communications with a broader range of investors. The extent to which such an alternative reduces the flexibility afforded to issuers would depend on whether in practice affected issuers would have elected to combine multiple types of communications.

The proposed rule does not limit the scope of the content that may be a part of test-the-waters communications. As an alternative, we could limit the scope of permissible test-the-waters communications to certain types of information about the issuer or offering. For instance, we could limit the scope of communications in a manner similar to Securities Act Rules 17 CFR 230.134 or Rule 482 with respect to advertising and sales literature, for all or some of the issuers eligible to rely on the proposed rule. For instance, we could limit how open-end funds, or all registered investment companies, present performance information in test-the-waters communications. Limiting the scope of test-the-waters communications may strengthen investor protection compared to the proposed rule, by lowering the potential for incomplete or misleading information to be included in such materials. However, these benefits to investors may be small given the mitigating factors analyzed in Section III.C.4. Such restrictions also may reduce the utility of test-the-waters communications to issuers and the

[123] *See* also *supra* note 100 and accompanying text.

[124] Rule 164 under the Securities Act permits issuers to engage in communications with any investor, including an investor that is not a QIB or IAI, subject to a requirement to file such materials. Regulation A permits issuers to test the waters with all investors. However, Regulation A requires test-the-waters communications to be publicly filed and to include certain required legends and disclaimers. Regulation A also imposes offering limits; imposes investment limits for non-accredited investors; and does not preempt state review of offering materials for Tier 1 offerings.

associated benefits for capital formation, compared to the proposed rule.

Proposed Rule 163B contains a reasonable belief provision but does not require issuers to take specified steps to determine that the solicited investor is a QIB or IAI or specify steps that an issuer could or must take to establish a reasonable belief. As an alternative, we could require issuers to determine that the investor is a QIB or IAI or specify steps that an issuer could or must take to establish a reasonable belief. Compared to the proposed rule, these alternatives might result in a lower risk of solicitation of investors that are neither QIBs nor IAIs. However, they also might significantly increase costs for issuers electing to rely on the proposed rule and as a result decrease the use of test-the-waters communications and the benefits for the level, efficiency, and cost of capital raising, compared to the proposed rule.

E. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rule and alternatives to it, and whether the proposed rule, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on the estimates of costs and benefits for the affected parties.

1. Would the ability to undertake test-the-waters communications under proposed Rule 163B facilitate capital formation? If so, how? Would the proposed rule result in additional capital formation, or would issuers switch between registered and exempt offerings?

2. Which categories of issuers would realize the greatest benefits from proposed Rule 163B? Would issuers in follow-on offerings realize benefits from proposed Rule 163B? What factors would affect the ability of issuers to realize benefits from the proposed rule? For instance, what effect would the application of Regulation FD have on the use of the proposed rule?

3. Would registered investment companies realize benefits from being able to engage in test-the-waters communications? If so, which categories of registered investment companies would realize the greatest benefits? What factors would affect the ability of registered investment companies to realize benefits from the proposed rule?

4. Would ABS issuers realize benefits from being able to engage in test-the-waters communications?

5. Would proposed Rule 163B benefit investors?

6. Would proposed Rule 163B have adverse effects on investors? If so, in which circumstances would such adverse effects be most likely?

7. What steps could we take to mitigate potential adverse effects on investors? How would such changes affect the likelihood that issuers would rely on the proposed rule and the costs and benefits of the proposed rule?

8. What are the benefits and costs of the reasonable belief approach in proposed Rule 163B? What are the benefits and costs of an alternative approach requiring an issuer to take specified steps to determine an investor's status?

9. Would proposed Rule 163B have effects on competition among issuers? Would proposed Rule 163B have effects on competition among investors?

10. What other economic effects would proposed Rule 163B have?

IV. Paperwork Reduction Act

We do not believe that the proposed rule would impose any new ''collection of information'' requirement as defined by the Paperwork Reduction Act of 1995 (''PRA''),[125] nor create any new filing, reporting, recordkeeping, or disclosure requirements. Accordingly, we are not submitting the proposed rule to the Office of Management and Budget for review under the PRA.[126] We request comment on our assertion that the proposed rule would not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[127] we solicit data to determine whether the proposed rule constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential annual effect on the U.S. economy; any potential increase 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.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'')[128] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with Section 603 of the RFA.[129] This IRFA relates to proposed Rule 163B and proposed amendments to Rule 405 of the Securities Act.

A. Reasons for, and Objectives of, the Proposed Action

The primary objective of the proposed rule is to enable all issuers to engage in solicitations of interest prior to a registered public offering to determine potential investors' interest in an offering before or after the filing of a registration statement, provided that the potential investors are QIBs or IAIs. Pre-filing communications under our rules are currently limited to specific types of issuers and offerings.[130] By liberalizing pre-filing and post-filing communications for all issuers, we are also providing them with a cost-effective means for gauging market interest prior to incurring the full costs of a registered offering. The reasons for, and objectives of, the proposed rule are discussed in more detail in Sections I and II above.

B. Legal Basis

We are proposing the amendments pursuant to Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, and Sections 6, 24, and 38 of the Investment Company Act of 1940, as amended.

C. Small Entities Subject to the Proposed Rule

The proposed rule would affect issuers that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[131]

[125] 44 U.S.C. 3501 *et seq.*

[126] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[127] Public Law 104–121, tit. II, 110 Stat. 857 (1996).

[128] 5 U.S.C. 601 *et seq.*

[129] 5 U.S.C. 603.

[130] *See* Securities Act Section 5(d), which is only available to EGCs, Rule 163, which is available only to WKSIs, and Rule 255, which is available only to issuers conducting exempt offerings pursuant to Regulation A.

[131] 5 U.S.C. 601(6).

For purposes of the RFA, under 17 CFR 230.157 an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under 17 CFR 240.0–10(a), an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

The proposed rule would permit all issuers, including small entities, to engage in test-the-waters communications. We estimate that there are currently 1,163 entities, other than investment companies, that would be eligible to rely on the proposed rule that may be considered small entities.[132] In addition, we estimate that, as of June 2018, there were 116 registered investment companies and BDCs that would be eligible to rely on the proposed rule that may be considered small entities.[133]

Small entities meeting the definition of EGC are currently eligible to engage in test-the-waters communications pursuant to Section 5(d) of the Securities Act. These small entities and other small entities that do not meet the definition of EGC would be eligible to rely on the proposed rule if it is adopted. Because reliance on the proposed rule would be voluntary, we cannot accurately estimate the number of small entities that would choose to test the waters, though we anticipate that the small entities most likely to engage in these communications would be those that expect the benefits of this strategy to outweigh the costs.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The purpose of the proposed rule is to allow all issuers, not solely EGCs, to engage in communications with certain potential investors to determine their interest in an offering before or after the filing of a Securities Act registration statement. Under the proposed rule, the use of test-the-waters communications would be voluntary and any communications that comply with the proposed rule would not need to include a legend or be filed with the Commission, provided that the communications do not trigger a disclosure obligation pursuant to any other rules.

Given the voluntary nature of the test-the-waters communications and that the proposed rule would not impose a filing requirement, we do not expect the proposed rule to significantly impact existing reporting, recordkeeping and other compliance burdens. Small entities choosing to avail themselves of the proposed rule may seek the advice of legal or accounting professionals in connection with making test-the-waters communications. We discuss the economic impact, including the estimated costs and benefits, of the proposed rule to all issuers, including small entities, in Section III above.

E. Duplicative, Overlapping, or Conflicting Federal Rules

For the reasons discussed above, we believe that the proposed rule would partially overlap with Securities Act Section 5(d) and Rule 163. We do not believe the proposed rule would otherwise duplicate, overlap or conflict with federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We believe that different compliance or reporting requirements for small entities are not necessary because, while the proposed rule would broaden the number of issuers eligible to engage in communications before and after filing a registration statement, including the number of small entity issuers, it would not establish any new reporting, recordkeeping or compliance requirements for small entities. We do not believe that the proposed rule would impose any significant new compliance obligations. Accordingly, we do not believe it is necessary to exempt small entities from all or part of the proposed rule.

Finally, with respect to using performance rather than design standards, the proposed rule generally contains elements similar to performance standards, which we believe is appropriate because issuers would have the flexibility to tailor their communications when assessing market interest in their securities offerings.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed rule;
- The existence or nature of the potential impact of the proposed rule on small entity issuers discussed in the analysis; and
- How to quantify the impact of the proposed rule.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself.

VII. Statutory Authority

We are adopting the rule amendments contained in this document under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, and Sections 6, 24, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78*o*, 78*o*-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Add § 230.163B to read as follows:

[132] This estimate is based on staff analysis of XBRL data submitted by filers, other than co-registrants, with EDGAR filings of Forms 10–K, 20–F, and 40–F and amendments filed during the calendar year 2017.

[133] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (Forms N–Q and N–CSR) for the second quarter of 2018.

§ 230.163B Exemption from section 5(b)(1) and section 5(c) of the Act for certain communications to qualified institutional buyers or institutional accredited investors

(a)(1) Attempted compliance with this rule does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this rule does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act (15 U.S.C. 77e).

(2) This rule is not available for any communication that, although in technical compliance with this rule, is part of a plan or scheme to evade the requirements of section 5 of the Act.

(b)(1) An issuer, or any person authorized to act on behalf of an issuer, may engage in oral or written communications with potential investors that are, or that it reasonably believes are, qualified institutional buyers, as defined in § 230.144A, or institutions that are accredited investors, as defined in §§ 230.501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8), or any successor thereto, to determine whether such investors might have an interest in a contemplated registered securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission. Communications under this rule shall be exempt from section 5(b)(1) (15 U.S.C. 77e(b)(1)) and section 5(c) of the Act (15 U.S.C. 77e(c)).

(2) Any oral or written communication by an issuer, or any person authorized to act on behalf of an issuer, made in reliance on this rule will be deemed an ''offer'' as defined in section 2(a)(3) of the Act (15 U.S.C.77b(a)(3)).

(3) Any oral or written communication by an issuer, or any person authorized to act on behalf of an issuer, made in reliance on this rule is not required to be filed pursuant to § 230.424(a) or § 230.497(a) of Regulation C under the Act or section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) and the rules and regulations thereunder.

■ 3. In § 230.405 amend the definition of ''Free writing prospectus'' by revising paragraphs (2) and (3) and adding paragraph (4) to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Free writing prospectus.

* * * * *

(2) A written communication used in reliance on Rule 167 and Rule 426 (§ 230.167 and § 230.426);

(3) A written communication that constitutes an offer to sell or solicitation of an offer to buy such securities that falls within the exception from the definition of prospectus in clause (a) of section 2(a)(10) of the Act; or

(4) A written communication used in reliance on Rule 163B.

* * * * *

By the Commission.

Dated: February 19, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–03098 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0593; FRL–9989–63–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Colorado on February 25, 2015. We are also proposing approval of two SIP revisions submitted by the State of Colorado on May 24, 2017. These SIP revisions are necessary for Colorado to incorporate current federal prevention of significant deterioration (PSD) and nonattainment new source review (N–NSR) regulations. The intended effect of this action is to strengthen Colorado's SIP. The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 1, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0593, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On February 25, 2015, the State of Colorado submitted SIP revisions to Colorado Air Quality Control Commission Regulation Number 3. On October 12, 2017 (82 FR 47380), the EPA finalized approval of portions the February 25, 2015 submittal, specifically: (1) Colorado's revisions to fine particulate matter ($PM_{2.5}$) significant impact level (SIL) and significant monitoring concentration (SMC) provisions; (2) Revisions to Colorado's air pollution emission notices; and (3) Revisions to public notice requirements located in Regulation Number 3, Part B. Therefore, we do not need to take action on these portions of Colorado's February 25, 2015 submittal since they were acted on

previously. In addition, we are not acting on revisions to Regulation Number 3, Part C (concerning operating permits) because it is not part of the SIP. The remaining portions of the February 25, 2015 submittal include revisions to the state's PSD program, in particular the definitions of CO2e and regulated NSR pollutant, and the addition of plantwide applicability limit (PAL) provisions for GHGs. We describe these revisions and related EPA rulemakings in detail in the next section.

On March 24, 2017, the State of Colorado submitted two sets of SIP revisions to Colorado Air Quality Control Commission Regulation Number 3. The first submittal pertains to the June 23, 2014, U.S. Supreme Court decision in *Utility Air Regulatory Group (UARG)* v. *EPA.* The second addresses nonattainment NSR applicability in (among other things) ozone nonattainment areas that have been classified or reclassified as serious, severe, or extreme. We also describe these revisions and related EPA rulemakings in detail in the next section.

II. Analysis of Submittals

February 25, 2015 Submittal

Revisions to the Definition of CO2e

On November 29, 2013, the EPA published a final rulemaking titled: ''2013 Revisions to the Greenhouse Gas Reporting Rule (Rule) and Final Confidentiality Determinations for New or Substantially Revised Data Elements'' (78 FR 71904). In 87 FR 71904, the EPA amended the Rule's table of global warming potentials (GWPs) to revise the values of certain greenhouse gases, which are codified in 40 CFR part 98, subpart A, Table A–1, (Part 98). Part 98 was initially promulgated on October 31, 2009 (74 FR 56260) and requires reporting of GHG's from certain facilities and suppliers. In this action, Colorado is updating its definition of CO2e to incorporate the applicable GWPs in Part 98 in effect as of November 29, 2013. The State's amendment is consistent with the EPA's regulations and we propose to approve the updated definition.

Revisions to the Definition of Regulated NSR Pollutant

In this action, Colorado is updating its definition of ''Regulated NSR Pollutant'' in response to an October 25, 2012 rulemaking by the EPA titled: ''Implementation of New Source Review (NSR) Program for Particulate Matter less than 2.5 micrometers ($PM_{2.5}$): Amendment to the definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter (77 FR 65107).'' In that rulemaking, the EPA removed a general requirement in the definition of ''Regulated NSR Pollutant'' to include condensable particulate matter (PM) when measuring one of the emission-related indicators for PM known as ''particulate matter emissions'' in the context of PSD and NSR regulations. The rulemaking did not change the requirement for measurement of condensable PM for two other emissions-related indicators for emissions of PM particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10} emissions) and $PM_{2.5}$ emissions. The update to Colorado's definition of ''Regulated NSR Pollutant'' is consistent with the EPA's October 25, 2012 rulemaking and we therefore propose to approve it.

Colorado is also revising its definition of ''Regulated NSR Pollutant'' with regards to GHGs. The EPA defines ''Regulated NSR Pollutant'' to include any pollutant subject to any standard promulgated under the Clean Air Act Section 111. Colorado's revised definition of ''Regulated NSR Pollutant'' excludes, for the purposes of the definition, GHG from being considered as subject to any standard promulgated under the Clean Air Act Section 111. The State notes that GHGs continue to be a regulated NSR pollutant under the next portion of the definition, as a ''pollutant subject to regulation.'' Colorado's revision stems from their concern that the EPA did not revise the definition of ''Regulated NSR pollutant'' when promulgating CAA section 111(b) standards (known as New Source Performance Standards) for GHG emissions from new, modified, and reconstructed electric utility generating units. See 80 FR 64510 (Oct. 23, 2015). We note that the October 23, 2015 action addressed this by promulgating 40 CFR 60.5515, which clarifies the meaning within the PSD definition ''regulated NSR pollutant'' of the phrase ''subject to any standard promulgated under section 111 of the Act'' for GHGs. Colorado's revision achieves the same result with respect to the NSPS for electric utility generating units. We therefore propose to approve it.

GHG PALs

On July 12, 2012, the EPA published a final rulemaking titled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits'' (77 FR 41051.) This rulemaking represented Step 3 of the EPA's phased-in approach to permitting sources of GHG emissions as stated in the GHG Tailoring Rule. The rulemaking promulgated revisions to the federal PSD program in 40 CFR 52.21 for better implementation of the GHG Tailoring Rule by providing for PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. 77 FR 41051, 41052. This streamlining approach provides for the use of GHG PALs on either a mass (tons per year) or CO2e basis, which includes the option to use the CO2e based increases provided in the subject to regulation applicability thresholds in setting the PAL, and to allow the PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation.

The EPA did not adopt the changes into the regulations for state PSD programs, 40 CFR 51.166, because the changes were not minimum requirements that must be adopted by states in their SIP-approved PSD programs. However, we noted that nothing in the rulemaking was intended to prevent states from adopting the PAL changes in 40 CFR 52.21. into their approved PSD programs. 77 FR 41070.

On April 24, 2014, the EPA approved PSD revisions submitted by the State of Colorado that establish: (1) GHG emissions are a regulated pollutant under Colorado's NSR PSD program, and (2) emission thresholds for determining which new stationary sources and modification projects become subject to Colorado's NSR PSD permitting requirements for their GHG emissions consistent with the Tailoring Rule. (79 FR 22772.) Colorado's February 25, 2015 submittal requests to revise its PSD permitting regulations to correspond to PAL revisions in the EPA's July 12, 2012 rulemaking. Colorado is revising its Part A (General Provisions Applicable to Reporting and Permitting) and Part D (Major Stationary Source New Source Review and Prevention of Significant Deterioration) regulations to incorporate GHG PALs on either a mass basis or a CO2e basis for existing major PSD sources, or any existing GHG-only source. These revisions would allow, among other things, that GHGs shall not be subject to regulation if a stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in Part D, and complies with the PAL permit containing the GHG PAL.

Colorado's incorporation of GHG PALs still applies to determining

whether sources are subject to regulatory emission thresholds in setting the PAL, and in allowing the PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation for ''anyway'' sources.

Based on our review, we propose to find that Colorado's revisions are consistent with the EPA's PAL regulations. The docket for this action contains a crosswalk between the revisions in Colorado's May 24, 2017 submittal and the PAL provisions in 40 CFR 52.21 as revised in the EPA's July 12, 2012 rulemaking. The crosswalk shows that Colorado has essentially adopted the GHG PAL revisions unchanged, as suggested by the preamble to the July 12, 2012 rulemaking.

May 24, 2017 Submittal

Revisions to Regulation Number 3, Part A

On June 3, 2010, the EPA published a final rule, known as the GHG Tailoring Rule, which phased in permitting requirements for GHG emissions from stationary sources under the CAA PSD permitting program in three steps (75 FR 31514.) Under its interpretation of the CAA at the time, the EPA determined it was necessary to avoid an unmanageable increase in the number of sources that would be required to obtain PSD permits under the CAA because the sources emitted or had the potential to emit GHGs above the applicable major source and major modification thresholds. In Step 1 of the GHG Tailoring Rule, the EPA limited application of PSD requirements to sources only if they were subject to PSD ''anyway'' due to the emissions of other non-GHG pollutants. These sources were referred to as ''anyway'' sources. In Step 2 of the GHG Tailoring Rule, the EPA applied the PSD permitting requirements under the CAA to sources that were classified as major based solely on their GHG emissions or potential to emit GHGs, and to modifications of otherwise major sources that require a PSD permit because they increased only GHG emissions above the level in the EPA regulations.

On June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs (anyway sources), contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (DC Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

In accordance with the D.C. Circuit's amended judgment, on August 19, 2015, the EPA published a final rulemaking titled: ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Vacated Elements.'' In this rulemaking, the EPA removed GHG Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) from the CFR.

In response to the court's decision and the subsequent EPA rulemaking, the May 24, 2017 submittal revises the definition of ''subject to regulation'' by removing Regulation 3, Part A, Section I.B.44.e. from the regulation. The removal is consistent with the EPA's revised definition of ''subject to regulation''; we therefore propose to approve it.

Revisions to Regulation Number 3, Part D

Colorado is revising their definition of ''major stationary source'' contained in Regulation Number 3, Part D, Section II, the nonattainment NSR program, to include the ozone nonattainment area major source thresholds. This revision is consistent with the federal definition for ''major stationary source'' located in 40 CFR 51.165(a)(1)(iv)(A)(1). Colorado's current definition of ''major stationary source'' does not contain thresholds for determining what is a major source based on ozone nonattainment area classification. Thus, if an ozone nonattainment area were ever classified, or reclassified as serious, severe, or extreme, Colorado would need to adopt the same lower major source thresholds that would apply on a federal basis before permitting new or modified sources. Therefore, should a Colorado moderate ozone nonattainment area ever be reclassified to a more stringent classification, this revision to the definition of ''major stationary source'' ensures consistency with the federal definition and provides regulatory certainty if Colorado's ozone nonattainment area should ever be reclassified. We propose to approve these changes as they are consistent with the EPA's regulation.

Colorado is also revising their definition of ''major emissions unit'' in the PAL provisions for the PSD program. The federal definition for ''major emissions unit'' located in 40 CFR 51.166(w)(2)(iv)(b) contains both a meaning of the phrase and an example of when an emissions unit would be a major emissions unit for volatile organic compounds (VOC) if the emissions unit were located in a serious ozone nonattainment area. The revision removes the example from Colorado's provision. We propose to approve this change to the SIP because the state has updated the definition of ''major stationary source'' in the nonattainment NSR program to reflect the thresholds for serious, severe, and extreme ozone nonattainment areas, and the first part of Colorado's definition for ''major emissions unit'' refers to this updated definition.

Colorado is also revising their definition of ''significant'' in the nonattainment NSR program. Currently, Colorado's definition of ''significant'' does not contain emissions rates pertaining to serious, severe, or extreme ozone nonattainment areas. Colorado's revision to their definition of ''significant'' is consistent with the serious, severe, or extreme ozone thresholds located in 40 CFR 51.165(a)(1)(x). The EPA proposes to approve this change.

III. What are the changes that EPA is proposing to approve?

Except for the revisions the EPA acted on previously in 82 FR 47380, we are

proposing to approve all of the changes as submitted by the State of Colorado on February 25, 2015, and May 24, 2017, as outlined in Tables 1 and 2 below.

TABLE 1—LIST OF FEBRUARY 2015 COLORADO REVISIONS THAT EPA IS PROPOSING TO APPROVE

Revised sections in February 25, 2015 submission proposed for approval
Regulation Number 3, Part A:
I.B.10, I.B.23., I.B.25.c., I.B.28, I.B.28.e., I.B.43., I.B.44.b., I.B.44.c., I.B.44.e., V.C.6–8., V.C.12., V.I.1.
Regulation Number 3, Part B:
N/A.
Regulation Number 3, Part C:
N/A.
Regulation Number 3, Part D:
I.A.2., I.A.3., I.B.1., I.B.2., I.B.3., I.C., II.A.1.d., II.A.2, II.A.4., II.A.4.e.–f., II.A.5.c.,II.A.13.a., II.A.13.a.(i)–(ii), II.A.13.b., II.A.13.b.(i)–(ii), II.A.16.–22., II.A.22.a–c.,II.A.23–31., II.A.32–35, II.A.36–39, .., , II.A.40.a.–c., II.A.40.d, II.A.40.e.–g., II.A.41–45.,., II.A.46, II.A.46.a–b, II.A.47, II.A.47.a–b, II.A.48, V.A.3.c, V.A.7.c., V.A.7.c.(i)(C)., V.A.7.c.(v)., VI.A.6.,VI.B.5., VI.B.5.a.(iii).,VI.B.5.e.; XV.A.1.; XV.A.2.; XV.A.2.c–d; XV.A.3; XV.B; XV.B.1; XV.B.4.; XV.C.1.; XV.C.1.a.; XV.C.1.d.; XV.C.1.g; XV.D.; XV.E.1.; XV.E.4; XV.E.6.; XV.E.6.a.; XV.E.6.b; XV.E.6.c.; XV.F.; XV.F.1.; XV.F.3.; XV.F.5.; XV.F.6.; XV.F.7.; XV.F.11; XV.G.2.b.; XV.H.1.a.; XV.H.4.; XV.H.5.; XV.I.1.; XV.I.2.; XV.I.4.c.(i)–(ii); XV.J.1.; XV.J.1.a.; XV.J.1.b.; XV.K.1.a: XV.N.1.b; XV.N.1.d.; and XV.N.2.

TABLE 2—LIST OF MAY 2017 COLORADO REVISIONS THAT EPA IS PROPOSING TO APPROVE

Revised sections in May 24, 2017 submissions proposed for approval
Regulation Number 3, Part A:
I.B.44.e.
Regulation Number 3, Part B:
N/A.
Regulation Number 3, Part C:
N/A.
Regulation Number 3, Part D:
II.A.22.b II.A.25.b; II.A.44.a.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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. 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 CAA. Accordingly, this 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 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 CAA; 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: February 22, 2019.

Douglas Benevento,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–03545 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0806; FRL–9990–17–Region 9]

Air Plan Approval; Hawaii; Infrastructure SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) submission from the State of Hawaii regarding certain Clean Air Act (CAA or ''Act'') requirements related to the interstate transport for the 2008 ozone national ambient air quality standards (NAAQS). The interstate transport requirements consist of several elements; this proposal pertains only to 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 and interference with maintenance of the 2008 ozone NAAQS in other states. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 1, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0806 at *https://www.regulations.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*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, (415) 972–3856, *kelly.thomasp@epa.gov*.

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

Table of Contents

I. Background
A. Interstate Transport
B. State Submittal
II. Interstate Transport Analysis and Evaluation
A. The EPA's Evaluation Approach
B. The HDOH Transport Analysis
C. The EPA's Evaluation of Significant Contribution to Nonattainment
D. The EPA's Evaluation of Interference With Maintenance
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

Section 110(a)(1) of the CAA requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance, and enforcement of the NAAQS. The EPA refers to the SIP submissions required by these provisions as ''infrastructure SIP'' submissions. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. This proposed rule pertains to the infrastructure SIP requirements for interstate transport of air pollution.

A. Interstate Transport

Section 110(a)(2)(D)(i) of the CAA 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, or interfere with measures required to prevent significant deterioration of air quality or to protect visibility in any other state. This proposed rule addresses the two requirements under section 110(a)(2)(D)(i)(I), which we refer to as prong 1 (significant contribution to nonattainment of the NAAQS in any other state) and prong 2 (interference with maintenance of the NAAQS in any other state).[1] The EPA refers to SIP revisions addressing the requirements of section 110(a)(2)(D)(i)(I) as ''good neighbor SIPs'' or ''interstate transport SIPs.''

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS, setting them at 0.075 parts per million. In 2015, the EPA issued an informational memo regarding interstate transport SIP requirements for the 2008 ozone NAAQS (''Ozone Transport Memo'').[2] The Ozone Transport Memo, following the approach used in the original Cross State Air Pollution Rule (CSAPR),[3] provided data identifying ozone monitoring sites in the continental United States (U.S.) that were projected to be in nonattainment or have maintenance problems for the 2008 ozone NAAQS in 2018. In 2016, the EPA updated our ozone transport modeling through the Cross-State Air Pollution Rule Update (''CSAPR Update'').[4] As part of this action, we changed the modeled year to 2017, aligning it with the relevant attainment dates for the 2008 ozone NAAQS as required by the D.C. Circuit's decision in *North Carolina* v. *EPA*.[5] This CSAPR modeling did not include the island state of Hawaii and thus a different approach is used in this proposal.

B. State Submittal

The Hawaii Department of Health (HDOH) submitted its proposed good

[1] This proposed action does not address the two elements of the interstate transport SIP provision in CAA section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state or elements associated with section 110(a)(2)(D)(ii) regarding interstate pollution abatement and international air pollution.

[2] Memorandum dated January 22, 2015, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, EPA, to Regional Air Division Directors, Regions 1–10, ''Information on Interstate Transport 'Good Neighbor' Provision for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).''

[3] 76 FR 48208 (August 8, 2011).

[4] 81 FR 74504 (October 26, 2016). The modeling results are found in the ''Ozone Transport Policy Analysis Final Rule TSD,'' EPA, August 2016, and an update to the affiliated final CSAPR Update ozone design value and contributions spreadsheet, entitled Copy of final_csapr_update_ozone_design_values_contributions.xlsx.

[5] 531 F.3d 896, 911–12 (D.C. Cir. 2008) (holding that EPA must coordinate interstate transport compliance deadlines with downwind attainment deadlines).

neighbor SIP for the 2008 ozone NAAQS in a letter dated June 8, 2015,[6] as a parallel processing request.[7] The EPA notified HDOH that the submittal was complete on June 12, 2015.[8] HDOH submitted a final good neighbor SIP (''HDOH Submittal'') on August 6, 2015,[9] including documentation of public participation meeting the requirements of CAA section 110(a)(2) and 40 CFR 51.102. The content of the HDOH Submittal is discussed in section II.B (''The HDOH Transport Analysis'') of this notice.

II. Interstate Transport Analysis and Evaluation

A. The EPA's Evaluation Approach

To assess interstate transport for regional pollutants such as fine particulate matter ($PM_{2.5}$) or ozone, we typically first identify the areas that may have problems attaining or maintaining attainment of the NAAQS. We refer to regulatory monitors that are expected to exceed the NAAQS under average conditions as ''nonattainment receptors'' and those that may have difficulty maintaining the NAAQS as ''maintenance receptors.'' Such receptors may include regulatory monitors operated by states, tribes, or local air agencies.

In some cases, we have identified these receptors by modeling air quality in a future year that is relevant to CAA attainment deadlines for a given NAAQS. This type of modeling has been based on air quality data, emissions inventories, existing and planned air pollution control measures, and other information. As previously mentioned in Section I.A., the EPA modeled air quality in the 48 contiguous states of the continental U.S. in the CSAPR Update.[10] This information is used in this analysis to identify states with nonattainment and maintenance receptors for the 2008 ozone NAAQS.[11] To evaluate interstate transport for the 2008 ozone NAAQS for states in the continental U.S., the EPA estimated interstate contributions from and to all other continental states. The EPA then determined which upwind states contribute to these identified air quality problems in amounts sufficient to warrant further evaluation to determine if the state can make emission reductions to reduce its contribution. The CSAPR Update used a screening threshold (1% of the NAAQS or 0.75 parts per billion) to identify contributing upwind states warranting further review and analysis.

The EPA does not believe that modeling is necessarily required, particularly for isolated states like Hawaii. A proper and well-supported weight of evidence approach can provide sufficient information for purposes of addressing transport with respect to the 2008 ozone NAAQS. In a weight of evidence analysis, no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate significant contributions to nonattainment or interference with maintenance of the 2008 ozone NAAQS in another state.

B. The HDOH Transport Analysis

HDOH concluded that Hawaii does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS for another state, citing several factors: The distance from Hawaii to the continental U.S; the relatively small quantity of ozone precursor emissions in Hawaii; and an evaluation of ozone transport.

In the HDOH Submittal, the State notes that Hawaii is approximately 2,390 miles from the nearest state, California. It also compares Hawaii's ozone precursor emissions to those of California. Emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) from Hawaii were 5.0% and 5.9% respectively of California's emissions in 2008 and 6.8% and 1.3% in 2011.

Appendix 1 to the HDOH Submittal shows trajectories for emissions from Hawaii's Campbell Industrial Park, which includes a refinery and power generation facility, based on 2010 meteorological data. The trajectories initially travel eastward, before turning westward. A very small fraction of emissions arrives in the continental U.S. more than two days after release and a slightly larger fraction arrives five days after release.

C. The EPA's Evaluation of Significant Contribution to Nonattainment

In the modeling performed for the CSAPR Update, the westernmost projected nonattainment receptors in the U.S. were in California and Texas.[12] The nearest California projected nonattainment receptor is located in Turlock, Stanislaus County, which is 2,389 miles from the easternmost edge of Hawaii.[13] The nearest Texas nonattainment receptor is located in Manvel, Brazoria County, which is 3,765 miles from Hawaii.[14]

We have supplemented Hawaii's emission comparison with California to include Arizona, Colorado, and Texas because Arizona's contribution to ozone levels in California, Texas, and Colorado was considered in the EPA's modeling for the CSAPR Update, as explained further below.[15] Hawaii's emissions are substantially lower than emissions from California, Arizona, Colorado, and Texas, as shown in Table 1.[16] We further note that emissions of ozone precursors in Hawaii decreased over time.

[6] Letter dated June 8, 2015, from Virginia Pressler, M.D., Director of Health, HDOH, to Jared Blumenfeld, Regional Administrator, U.S. EPA, Region IX.

[7] Under the EPA's ''parallel processing'' procedure, the EPA may propose a rulemaking action concurrently with the state's proposed rulemaking. See 40 CFR part 51, appendix V for more information.

[8] Letter dated June 12, 2015, from Colleen McKaughan, Acting Director, Air Division, EPA Region 9, to Nolan Hirai, HDOH.

[9] Letter dated August 6, 2015, from Virginia Pressler, M.D., Director of Health, HDOH, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX.

[10] The methodology for the EPA's transport modeling for the 2008 ozone is described in the CSAPR Update Rule (81 FR 74504, October 26, 2016).

[11] Nonattainment receptors were projected to have 2017 average design values higher than the 2008 ozone NAAQS and maintenance receptors were projected to have 2017 maximum design values higher than the 2008 ozone NAAQS.

[12] Copy of Final_csapr_update_ozone_design_values_contributions.xlsx.

[13] Monitor ID 060990006.

[14] Monitor ID 480391004.

[15] Copy of final_csapr_updates_ozone_design_values_contributions.xlsx.

[16] The data were downloaded from the EPA's National Emissions Inventory Gateway and included in the docket for this action, in a spreadsheet entitled HI–AZ–CA–CO–TX NO_X&VOC 2008–11–14.xlsx.

TABLE 1—EMISSIONS OF OZONE PRECURSORS

[Tons per year] [a]

Pollutant	NO_X			VOC		
Year	2008	[b] 2011	[b] 2014	2008	[b] 2011	[b] 2014
HI	55,447	54,803	43,421	41,724	38,781	34,545
AZ	311,197	256,227	229,555	2,118,307	2,270,916	2,016,827
CA	1,086,293	770,902	580,053	4,037,072	2,996,891	3,331,126
CO	301,556	332,361	282,078	1,084,404	1,331,019	960,549
TX	1,729,465	1,384,989	1,326,015	5,853,227	7,597,708	6,634,878

[a] Data from EPA's National Emissions Inventory: 2014 Version 2, 2011 Version 2, and 2008 Version 3 (some values for 2011 and 2008 emissions differ slightly from those provided by HDOH).

[b] Non-anthropogenic event emissions (*e.g.,* wildfires) were not included in these data.

In the CSAPR Update, the EPA modeled Arizona's 2017 contributions to nonattainment receptors in El Centro and Los Angeles, California to be 2.4% and 1.1%, respectively. Although Arizona's contribution to these receptors in California exceeded the 1% screening threshold, we concluded that Arizona's contribution was not significant due to the low total contribution of all upwind states (4.4% at the El Centro receptor and 2.5% at Los Angeles receptor).[17] The proposed rule explained, the ''EPA believes that a 4.4% and 2.5% cumulative ozone contribution from all upwind states is negligible.'' [18] Our modeling estimated Arizona's contribution to all other ozone nonattainment receptors at less than the 1% threshold for potential significance.[19] The EPA's conclusions about Arizona's contribution to nonattainment receptors in California, Texas, and other states further suggests Hawaii's emissions are unlikely to significantly contribute to those nonattainment receptors because NO_X and VOC emissions from Arizona are more than five times larger than from Hawaii and more than 2,000 miles closer to the nonattainment receptors.

The trajectory analysis in Appendix 1 of the HDOH Submittal shows the predominant transport patterns in January and July of 2010 and supports the conclusion that Hawaii does not contribute to nonattainment of the 2008 ozone NAAQS in another state. Although the trajectory analysis was originally prepared in support of Hawaii's analysis for the 1997 ozone NAAQS, it still provides relevant technical information on transport patterns for the 2008 ozone NAAQS.

Although the analysis only looked at trajectories for the months of January and July of 2010, the National Weather Service lists persistent trade winds from the northeast as a feature of Hawaii's climate from May to October.[20] This suggests that the July 2010 metrological data, which form the basis of the trajectory analysis, would be similar to the meteorological data for other months from May to October. As the trajectory analysis shows, Hawaii's summertime emissions can be expected to travel eastward for at least one day, and often many days, before turning westward. Additionally, few of the trajectories reach the continental U.S. Our analysis is focused on summertime transport because summertime is typically the period of highest ozone concentrations.

Based on emissions data and the large distance that separates Hawaii from the continental U.S., it appears highly unlikely that emissions from Hawaii impact the ozone nonattainment receptors of California, Texas, or more distant states. In addition, the comparison of trajectory modeling results with ozone monitoring data provides further support for this conclusion. Additionally, emissions of ozone precursors in Hawaii are trending downward and should be less likely to impact other states' nonattainment areas in the future.

D. The EPA's Evaluation of Interference With Maintenance

In addition to projected maintenance receptors in California and Texas, the EPA modeling in the CSAPR Update also projected maintenance receptors in Colorado.[21] These maintenance receptors in California, Colorado, and Texas are located 2,401, 3,245, and 3,649 miles, respectively, from Hawaii.[22] The EPA's projected 2017 modeling estimated Arizona's contribution to be less than 1% of the NAAQS for all California, Colorado, and Texas maintenance receptors. Consequently, we determined the emissions from Arizona do not interfere with maintenance in California, Colorado, or Texas. Because NO_X and VOC emissions from Arizona are five times larger and more than 2000 miles closer than emissions from Hawaii, we expect that Hawaii's contribution to these receptors would also be less than 1%. Therefore, we conclude that emissions of ozone precursors in Hawaii are unlikely to interfere with maintenance receptors in California, Colorado, Texas, or any other state. This conclusion is also supported by the prevailing wind directions as documented by Hawaii's trajectory analysis.

III. The EPA's Proposed Action

Based on our review of the HDOH Submittal and the additional analysis discussed in this notice, we propose to find that emissions from Hawaii do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Accordingly, we propose to approve the HDOH Submittal as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

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. 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 they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does

[17] 81 FR 31513 (May 19, 2016).

[18] 81 FR 15200 (March 22, 2016).

[19] Copy of final_csapr_updates_ozone_design_values_contributions.xlsx.

[20] US Department of Commerce, National Oceanic and Atmospheric Association (NOAA). ''Honolulu, HI.'' Pacific Region Headquarters, NOAA's National Weather Service, *www.prh.noaa.gov/hnl/pages/climate_summary.php.*

[21] Copy of final_csapr_updates_ozone_design_values_contributions.xlsx.

[22] Monitor ID 060610006, in Roseville, Placer County, California; Monitor ID 080590011 in Applewood, Jefferson County Colorado; and Monitor ID 481210034, in Denton, Denton County, Texas.

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 Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Infrastructure SIP, Interstate transport, Nitrogen oxides, Volatile organic compounds.

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

Dated: February 1, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–03564 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0794; FRL–9989–76–OAR]

RIN 2060–AT99

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and extension of public comment period.

SUMMARY: On February 7, 2019, the Environmental Protection Agency (EPA) published a document in the **Federal Register** to announce its proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review. The document also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. In addition, the EPA will extend the public comment period.

DATES: *Public Hearing:* The EPA will hold a public hearing on March 18, 2019, in Washington, DC. The deadline for accepting written comments is being extended by 9 days, to April 17, 2019. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The hearing will convene at 8:00 a.m. (local time) and will conclude at 6:00 p.m. There will be a lunch break from noon to 1 p.m. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: *https://www.epa.gov/mats/proposed-revised-supplemental-finding-and-results-residual-risk-and-technology-review.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the proposal (84 FR 2670) for the addresses and detailed instructions.

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses from the District of Columbia and all states and territories. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. Additional information on the REAL ID Act is available at: *https://www.dhs.gov/real-id.*

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available at *https://www.epa.gov/mats/proposed-revised-supplemental-finding-and-results-residual-risk-and-technology-review* or contact Adrian Gates at (919) 541–4860 or at *gates.adrian@epa.gov.* The last day to pre-register to speak at the hearing will be March 14, 2019. On March 15, 2019, the EPA will post at *https://www.epa.gov/mats/proposed-revised-supplemental-finding-and-results-residual-risk-and-technology-review* a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

SUPPLEMENTARY INFORMATION: Each commenter will have 5 minutes to

provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Adrian Gates if they will need specific equipment or if there are other special needs related to providing comments at the hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/mats/proposed-revised-supplemental-finding-and-results-residual-risk-and-technology-review.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Adrian Gates at (919) 541–4860 or *gates.adrian@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify Adrian Gates when they pre-register to speak that they will require the service of a translator or special accommodations such as audio description. We may not be able to arrange accommodations without advanced notice.

Dated: February 25, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–03518 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0418; FRL–9970–24]

RIN 2070–ZA16

Fenoxaprop-ethyl, Flufenpyr-ethyl, Imazapyr, Maleic hydrazide, Pyrazon, Quinclorac, Triflumizole, et al.; Proposed Tolerance and Tolerance Exemption Actions

Correction

In proposed rule document 2019–00787, appearing on pages 1691 through 1697 in the issue of Tuesday, February 5, 2019, make the following correction:

On page 1691, in the first column, under the **DATES** heading, ''February 5, 2019'' should read ''April 8, 2019''.

[FR Doc. C1–2019–00787 Filed 2–27–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 424, 455, and 457

[CMS–6058–RCN]

RIN 0938–AS84

Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process; Extension of Timeline for Publication of the Final Rule

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

ACTION: Extension of timeline for publication of a final rule.

SUMMARY: This document announces the extension of the timeline for publication of the ''Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process'' final rule. We are issuing this document in accordance with the Social Security Act (the Act), which requires notice to be provided in the **Federal Register** if there are exceptional circumstances that cause us to publish a final rule more than 3 years after the publication date of the proposed rule. In this case, the complexity of the rule and the scope of the comments received warrant the extension of the timeline for publication.

DATES: The timeline for publication of the final is extended for 1 year, until March 1, 2020.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION: In the March 1, 2016 **Federal Register** (81 FR 10720), we published a proposed rule titled ''Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process'' that would implement sections of the Affordable Care Act that require Medicare, Medicaid, and Children's Health Insurance Program (CHIP) providers and suppliers to disclose certain current and previous affiliations with other providers and suppliers. This proposed rule would also provide us with additional authority to deny or revoke a provider's or supplier's Medicare enrollment. These and other important provisions in the proposed rule would: (1) Eliminate significant program integrity loopholes of long-standing concern to CMS and the Department; and (2) help halt and deter ongoing fraudulent and abusive behavior, including patient harm, in Medicare, Medicaid, and CHIP.

Section 1871(a)(3)(A) of the Act requires the Secretary of the Department of Health and Human Services, in consultation with the Director of the Office of Management and Budget (OMB), to establish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. Section 1871(a)(3)(B) of the Act allows the timeline for publishing Medicare final regulations to vary based on the complexity of the regulation, the number and scope of comments received, and other related factors. The timeline for publishing the final rule, however, cannot exceed 3 years from the date of publishing the proposed regulation unless there are exceptional circumstances. The Secretary may extend the initial targeted publication date of the final rule if the Secretary provides public notice thereof, including a brief explanation of the justification for the variation, no later than the rule's previously established proposed publication date.

After consultation with the Director of OMB, the Department, through CMS, published a notice in the December 30, 2004 **Federal Register** (69 FR 78442) establishing a general 3-year timeline for publishing Medicare final rules after the publication of a proposed or interim final rule. Consistent with this, the final rule for the March 1, 2016 proposed rule was to be published by March 1, 2019.

This document announces an extension of the timeline for publication of the final rule due to exceptional circumstances. Based on both the public comments received and internal stakeholder feedback, we have determined that more time is needed to address and resolve certain complex policy and operational issues that the commenters and stakeholders raised. We stress that our decision in this matter to extend the timeline for issuing a final rule should not be viewed as a diminution of the Department's commitment to timely and effective rulemaking. Our goal remains to publish, as expeditiously as feasible, a final rule that strengthens our program integrity efforts while minimizing the

burden on providers and suppliers to the maximum possible extent. At this time, we believe we can best achieve this balance by issuing this continuation document.

Therefore, this document extends the timeline for publication of the final rule for 1 year, until March 1, 2020.

Dated: February 25, 2019.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–03697 Filed 2–27–19; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 18–349; FCC 18–179]

2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission's Notice of Proposed Rulemaking (*NPRM*) initiates the 2018 quadrennial review of its media ownership rules, launched pursuant to a requirement of the Telecommunications Act of 1996 (1996 Act) that the Commission review its media ownership rules every four years to determine whether they remain ''necessary in the public interest as the result of competition'' and to ''repeal or modify any determine[d] to be no longer in the public interest.'' The three rules currently subject to review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. The *NPRM* seeks comment on whether, given the current state of the media marketplace, the Commission should retain, modify, or eliminate any of these rules. The *NPRM* also seeks comment on several proposals offered as potential pro-diversity initiatives.

DATES: Comments due April 29, 2019. Reply comments due May 29, 2019.

ADDRESSES: Interested parties may submit comments and replies, identified by MB Docket No. 18–349, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For more detailed filing instructions, see the Procedural Matters section below.

FOR FURTHER INFORMATION CONTACT: Brendan Holland, Industry Analysis Division, Media Bureau, *Brendan.Holland@fcc.gov* (202) 418–2757.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in MB Docket No. 18–349; FCC 18–179, adopted on December 12, 2018, and released on December 13, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or online at *https://docs.fcc.gov/public/attachments/FCC-18-179A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. *Background.* Last year, the Commission completed its prior combined 2010/2014 review of its media ownership rules by adopting an Order on Reconsideration (*2010/2014 Quadrennial Review Order on Reconsideration*) of its initial Order (*2010/2014 Quadrennial Review Order*), a reconsideration that relaxed or eliminated several rules, including repeal of the previous bans on newspaper/broadcast and radio/television cross-ownership in a market. In the *2010/2014 Quadrennial Review Order on Reconsideration* the Commission revised the Local Television Ownership Rule by eliminating the requirement that, in order to own two stations in a market, eight independent voices must remain in the market post-transaction, and concluded that it would consider, on a case-by-case basis, combinations that would otherwise be barred by the prohibition on ownership of two top-four ranked stations in a market. In eliminating and revising its rules, the Commission recognized the dynamic changes in the media marketplace and the wealth of information sources now available to consumers. The Commission also found that, while the record in the 2010/2014 Quadrennial Review supported adoption of an incubator program to foster the entry of new and diverse voices in the broadcasting industry, the structure and implementation of such a program required further exploration. Accordingly, the Commission sought comment on these issues, and on August 2, 2018, adopted a Report and Order (*Incubator Order*) establishing an incubator program to foster new entry into the broadcasting industry. Under the program, an established broadcaster (*i.e.,* incubating entity) will provide a new entrant or small broadcaster (*i.e.,* incubated entity) with training, financing, and access to resources that would be otherwise inaccessible to these entities. In return for this support, the incubating entity can receive a waiver of the applicable Local Radio Ownership Rule that it can use either in the incubated market or in a comparable market within three years of the successful conclusion of a qualifying incubation relationship.

2. Multiple parties sought reconsideration and judicial review of the Commission's *2010/2014 Quadrennial Review Order, 2010/2014 Quadrennial Review Order on Reconsideration* and *Incubator Order.* The Third Circuit U.S. Court of Appeals has consolidated the petitions for judicial review of these Orders and its review is pending.

3. *Local Radio Ownership Rule.* The rule allows an entity to own: (1) Up to eight commercial radio stations in radio markets with at least 45 radio stations, no more than five of which may be in the same service (AM or FM); (2) up to seven commercial radio stations in radio markets with 30–44 radio stations, no more than four of which may be in the same service (AM or FM); (3) up to six commercial radio stations in radio markets with 15–29 radio stations, no more than four of which may be in the same service (AM or FM); and (4) up to five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which may be in the same service (AM or FM), provided that the entity does not own more than 50 percent of the radio stations in the market unless the combination comprises not more than one AM and one FM station. When determining the total number of radio stations within a

market, only full-power commercial and noncommercial radio stations are counted for purposes of the rule. Radio markets are defined by Nielsen Audio where applicable and, in Puerto Rico, the contour-overlap methodology used in areas outside of defined and rated Nielsen Audio Metro markets.

4. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that local radio ownership limits promoted competition, a public interest benefit providing a sufficient basis for retaining a local radio ownership rule. The Commission affirmed its previous finding that competitive local radio markets help promote viewpoint diversity and localism and are consistent with the Commission's goal of promoting minority and female broadcast station ownership. In the subsequent *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission adopted a presumption, to be further considered in this 2018 Quadrennial Review, in favor of waiving the Local Radio Ownership Rule for qualifying radio stations within embedded markets (*i.e.,* smaller markets, as defined by Nielsen Audio, that are contained within the boundaries of a larger, parent Nielsen Audio Metro market) where the parent market currently has multiple embedded markets (*i.e.,* New York and Washington, DC). Such a waiver would permit the applicant to comply with ownership limits determined by examining only the embedded market, and not both the embedded and parent markets. Stations would qualify for waivers under two conditions: (1) Compliance with the numerical ownership limits using the Nielsen Audio Metro methodology in each embedded market, and (2) compliance with the ownership limits using the contour-overlap methodology applicable to undefined markets in lieu of the Commission's current parent market analysis.

5. The Commission seeks comment generally on all aspects of the Local Radio Ownership Rule, including whether the rule remains necessary in the public interest to promote competition and specifically, whether there have been any changes in the marketplace since the 2010/2014 Quadrennial Review that would affect this determination. The Commission also seeks comment on whether, in today's radio marketplace, the rule remains necessary to promote other Commission policy goals such as viewpoint diversity, localism, and female and minority broadcast ownership. Commenters are asked to explain in detail and support with evidence their reasons for any recommended rule changes. If the rule is retained, the Commission will analyze relevant parts of the rule to examine whether each part remains necessary in the public interest due to competition or whether it should be modified or eliminated. Thus, the Commission seeks comment on each of the specific aspects of the rule's operation, including the relevant product market, market size tiers, numerical limits, and AM/FM subcaps, to assess whether these subparts remain necessary or whether any of all of them should be modified or eliminated. If the rule is retained but modified, the Commission seeks comment on whether and how the rule changes should apply to any pending applications. The Commission also seeks comment on whether to make permanent the interim contour-overlap methodology used to determine ownership limits in areas outside the boundaries of defined Nielsen Audio Metro markets, and on the issue of embedded market transactions.

6. In anticipation of further consideration of the presumption in favor of waiving the Local Radio Ownership Rule for radio stations within embedded markets, the National Association of Broadcasters (NAB) submitted a proposal to, among other things, allow an entity in the top 75 Nielsen Audio Metro markets to own or control up to eight commercial FM stations and unlimited AM stations in any of those markets. NAB also proposed that entities in those markets should be permitted to own up to two additional FM stations if they participated in the Commission's incubator program. NAB also proposed eliminating all limits on FM and AM ownership in all other markets. NAB claimed that these rule relaxations remove constraints on radio broadcasters' ability to compete on a level playing field in today's digital audio world where, NAB claimed the Commission cannot ignore, broadcast radio dominance has declined relative to streaming services such as Pandora and Spotify, satellite radio, podcasts, Facebook and You Tube, described as ''multiple major sources of competition for both listeners and advertisers in the audio marketplace.'' Thus, according to NAB, the more relevant factor for listeners has become where services can be accessed, which is now the same for radio and other services, rather than where services are headquartered. NAB added that allowing radio owners to achieve economies of scale and scope would enable them to improve their informational and entertainment programming. Other radio broadcasters similarly claimed that digital competitors such as Google and Facebook enjoy perceived advantages in ability to target advertising, do not need to employ local advertising salesforces, and had therefore captured significant shares of the local advertising market to the detriment of local broadcast radio. Other parties argued in opposition to NAB's proposal that allowing radio broadcasters to buy more stations would not help them compete against internet services such as Google and Facebook, the size of station portfolios had little relevance to dollars allocated to free radio, advertisers did not view radio and internet services as comparable, and radio remains the preferred audio medium for entertainment and local news.

7. The Commission received many additional comments in response to a request for updated information on the status of competition in the marketplace for the delivery of audio programming in seeking to prepare a biennial marketplace report for Congress, comments which are incorporated into the record of this 2018 Quadrennial Review. NAB provided information and statistical data purporting to show how fragmented the listening market has become, and a coalition of radio broadcasters claimed that radio listening has shrunk as audiences divide their time among other audio providers not subject to the same regulatory burdens as radio broadcasters. Other radio station owners asserted that the Commission's ownership limits prevent them from achieving the economies of scale and scope they need to compete with satellite radio and online audio services. On the other hand, coalitions representing musicians, recording artists, and representatives of the music industry argued that AM/FM radio continues to dominate the audio marketplace and that experience shows that consolidation in the radio industry harms small broadcasters and leads to the homogenization of programming.

8. *Market Definition.* The Commission concluded in the *2010/2014 Quadrennial Review Order* that the broadcast radio listening market remains the relevant product market for purposes of the Local Radio Ownership Rule and declined to expand its definition of the market to include non-broadcast audio sources, such as satellite radio and online audio services. The Commission's based this conclusion on the fact that broadcast radio stations provide ''free, over-the-air programming tailored to the needs of the stations' local markets,'' while in

contrast, satellite radio is a subscription service, online audio requires an internet connection, and neither typically provides programming responsive to local needs and interests. Similarly, in evaluating a broadcast radio merger of Entercom Communications and CBS in November 2017, the Department of Justice (DOJ) also considered the radio market, concluding that ''[m]any local and national advertisers consider English-language broadcast radio to be a particularly effective or important means to reach their desired customers, and do not consider advertisements on other media, including non-English-language broadcast radio, digital music streaming services (such as Pandora), and television, to be reasonable substitutes.''

9. The Commission now seeks comment on these differing perspectives of the state of the audio marketplace and on whether and how these perspectives should affect its understanding of the market for purposes of the Local Radio Ownership Rule. Should the Commission take DOJ's finding on the radio market into account and if so, how? Should the Commission continue to consider only local broadcast radio stations for purposes of the Local Radio Ownership Rule or should it revise its market definition to include other audio sources? Do local radio stations face direct competition today from satellite radio and online audio services? To what extent has radio's ability to attract listeners and advertisers been affected by satellite radio and online audio? Do advertisers view satellite radio and audio streaming services as substitutes for advertising on broadcast radio? How should the impact of internet services like Google and Facebook on local advertising markets factor into our consideration of the Local Radio Ownership Rule? Do consumers view non-broadcast audio services as meaningful substitutes for local radio stations? Do non-broadcast audio services provide programming that responds to the needs and interests of local markets? Does radio's free, over-the-air availability make it unique or non-substitutable in the audio marketplace? To what extent, if any, should the Commission consider the deployment of In Band on Channel digital radio technology and its role in enabling station owners to expand their program offerings and increase their economies of scale and scope? If the Commission were to revise its market definition, what non-broadcast sources should it include, and how should it count them or otherwise factor them into its rule for purposes of determining market size tiers and numerical limits? Could or should the Commission subtract from any consideration of non-broadcast sources the amount of online audio that listeners in a local market stream from over-the-air radio broadcasts? How would an expanded definition better serve Commission policy goals, if at all?

10. *Market Size Tiers.* In the *2010/2014 Quadrennial Review Order,* the Commission retained the Local Radio Ownership Rule's longstanding approach of imposing numerical ownership limits based on market size tiers and determining market size by counting the number of commercial and noncommercial radio stations within the market. The Commission declined to change the rule to treat embedded markets as separate markets. In addition, the Commission kept in place the demarcations of the four tiers set by Congress in 1996, which draw the lines among Nielsen Audio Metro markets at 45 plus, 30–44, 15–29, and 14 or fewer radio stations, including noncommercial stations. The Commission seeks comment on whether it should retain this approach of using market size tiers, and if it does so, whether the current demarcations should remain. Is there any reason to discontinue including noncommercial radio stations in market counts? How well has the rule's tiered structure served the rule's purposes, and does it promote the policy goals of competition, localism, and viewpoint diversity in today's radio marketplace? NAB's proposal would divide radio markets into only two tiers—the top 75 Nielsen Audio Metro markets and all other markets (*i.e.,* Nielsen Audio Metro markets outside of the top 75 and all undefined markets). What would be the advantages and disadvantages of creating a different number of tiers, including moving from a four-tiered to a two-tiered approach? If the Commission were to collapse four tiers into two, should it draw the line where NAB proposes? Commenters are invited to offer alternative proposals for a tiered approach or for a different type of approach altogether. For example, if the Commission changed from tiers based on station counts, should it consider tiers based on advertising revenue, or some other factor, rather than using Nielsen's Audio Metro market rankings as NAB proposes, which are based on population? Would advertising revenue provide a sufficiently stable measurement and how would such a measurement fit with defining the relevant product market as the broadcast radio listening market? How would the Commission and potential applicants obtain reliable advertising revenue data for all radio stations? Should the Commission factor non-broadcast audio sources in any tiered approach, and if so, how should it do so? For example: (1) If the Commission modifies its current tiers or creates new tiers, should it account for variations across markets in broadband access and adoption rates; (2) should the Commission treat fixed and mobile or wired and wireless broadband the same; and (3) how granularly can and should the Commission measure listening rates for satellite radio and online audio services?

11. In addition, should any modifications to the current tiered approach affect how the Commission applies the rule to areas outside the boundaries of defined Nielsen Audio Metro markets, and if so, how? NAB proposes removing all radio ownership limits for undefined areas. Would NAB's proposal be consistent with Commission policy goals or would it lead to excessive consolidation in those outside areas, and what alternative approach could the Commission take in areas of the country that are undefined by Nielsen Audio? Further, the contour-overlap methodology has been successfully applied on an interim basis to undefined markets for years and the Commission previously rejected arguments that it permitted too much consolidation in certain markets. Is this approach the most effective and practical for determining ownership limits in areas outside defined Nielsen Audio Metro markets and should the Commission therefore make it permanent? Any commenters opposed to adopting the contour-overlap methodology on a permanent basis should explain their reasoning and propose a detailed alternative supported by evidence.

12. *Numerical Limits.* In the *2010/2014 Quadrennial Review Order,* the Commission declined to relax or tighten the numerical limits restricting the number of radio stations an entity may own within a radio market. The Commission seeks comment on whether it is necessary as a result of competition to maintain the numerical limits for any or all of the market size tiers. If the Commission retains existing market tiers, are existing limits restricting the number of radio stations an entity may own within a radio market set appropriately for each of the market size tiers? Do the current limits adequately prevent a radio broadcaster from amassing excessive local market power? Conversely, do they permit sufficient growth to enable radio broadcasters to

obtain the additional assets they may need to improve the quality of their service? Commenters should provide concrete, actual examples of markets where the current limits are either too restrictive or too lenient, explain how those examples typify other markets in that tier, and specify the benefits to those markets that would be gained by revising the limits.

13. The Commission also seeks comment on whether it should account for the different signal strengths of radio stations by weighing different classes of radio stations differently for purposes of applying the numerical limits. For example, the Commission could consider a Class A AM station to be worth two stations, whereas a Class D AM station could be counted as one half a station. What would be the costs and benefits of such an approach? What values should be accorded to the different classes of radio stations if the Commission adopts such an approach? The Commission previously considered a proposal to assign different values to radio stations of different classes for purposes of determining market size tiers and seeks comment on assigning varying weights to different classes of radio stations when applying the numerical limits.

14. In addition, the Commission seeks comment on NAB's proposal to maintain the eight-station limit for the top 75 Nielsen Audio Metro markets but to apply it only to FM stations, thereby allowing unlimited AM ownership. NAB further proposes allowing an owner in the top 75 Nielson Audio Metro markets to acquire up to two additional FM stations if it participates in (and, the Commission assumes, successfully completes) the incubator program. For all other markets, NAB urges the elimination of numerical limits for both FM and AM services. The Commission seeks comment on all aspects of NAB's proposed changes to the numerical limits and invites alternative proposals. What would be the likely effects of removing FM limits in most markets? What would be the likely effects of allowing unlimited AM ownership across all markets? Would such actions, on balance, promote competition by enabling owners to increase their assets, or would they harm competition and/or ownership diversity by driving smaller broadcasters, including minority and women owners, from the marketplace? How would viewpoint diversity and localism be affected? The *Incubator Order* rewards successful incubation of a radio station with one waiver per market to exceed the applicable ownership limit by one station and allows participants to use no more than one reward waiver per market. NAB submitted its proposal to maintain the eight-station limit for the top 75 Nielsen Audio Metro markets before the Commission adopted the *Incubator Order,* so it is unclear whether NAB is suggesting that successful incubation of one station should result in a waiver for two stations or successful incubation of two stations should entitle an owner to acquire two stations above the limit within the same market. The Commission seeks comment on both possible interpretations.

15. *AM/FM Subcaps.* In the *2010/2014 Quadrennial Review Order,* the Commission retained the Local Radio Ownership Rule's AM/FM subcaps, which prevent a broadcaster from owning more than five AM or five FM stations in markets in the largest market tier, four AM or four FM stations in markets in the two middle-sized tiers, or three AM or three FM stations in markets in the smallest tier. The Commission seeks comment on whether the AM/FM subcaps remain necessary and whether its previous reasons for maintaining subcaps are still valid. For example, have subcaps promoted market entry? Are subcaps still necessary given the Commission's efforts to revitalize AM radio or has the disparity between the FM and AM services been narrowed to an extent that the subcaps could be relaxed or eliminated? Since its 2010/2014 Quadrennial Review, the Commission has granted over 1,000 applications to acquire and relocate FM translators to rebroadcast AM stations. Should the expanded and improved coverage of those AM stations affect the analysis of subcaps? Conversely, data from the 2010/2014 Quadrennial Review indicated that the transition to digital radio actually exacerbated the divide between the services because AM stations have been slower to adopt digital radio technology. What is the import of the current status of the digital radio transition for evaluating the subcaps? If subcaps continue to promote competition or ownership diversity, or otherwise serve the public interest, are they currently set at the appropriate levels?

16. If the Commission revises the Local Radio Ownership Rule, should the modified rule include AM or FM subcaps, and if so, how should they be applied? NAB's proposal essentially would eliminate AM subcaps in all markets and retain FM subcaps in only the top 75 markets. NAB does not explain why it would distinguish the FM service for restricted ownership in the top markets rather than limit the total number of radio stations in those markets regardless of service, and the Commission seeks comment on whether the proposal is supported by technical or marketplace differences between the services. In a letter filed shortly after NAB submitted its proposal, the owner of a network of AM stations argued that removing and/or relaxing FM subcaps would harm the AM service by facilitating the migration of content to the FM service. Concurring with that view, iHeartMedia urges the Commission to loosen restrictions on AM ownership while retaining the existing FM subcaps, arguing that doing so would be consistent with the Commission's efforts to revitalize AM radio. Considering these competing positions, the Commission seeks comment on what limits, if any, should apply to AM and FM ownership, whether to retain the current market size tiers and numerical limits, and on whether and how any proposed revisions to the Local Radio Ownership Rule should include such limits.

17. *Embedded Markets.* Owners of radio stations in embedded markets within a parent market, which currently exist only in New York and Washington, DC, must comply with the Local Radio Ownership Rule's numerical limits for both the embedded market and the parent market. In response to the 2010/2014 Quadrennial Review Further Notice of Proposed Rulemaking (*FNPRM*), Connoisseur Media argued that because radio stations within different embedded markets within a parent market have little or no contour overlap and may reach different populations, the Commission's analysis of a proposed acquisition in one embedded market should not include stations owned in the other embedded markets within the same parent market. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission declined to adopt an across-the-board change to its embedded market methodology, but adopted a waiver standard whereby embedded market transactions in markets with multiple embedded markets would be presumed to be in the public interest if they met a two-prong test proposed by Connoisseur: (1) As with the Commission's current methodology for embedded markets, a radio station owner seeking a rule waiver must comply with the applicable numerical ownership limit in each embedded market using the Nielsen Audio Metro methodology; and (2) instead of then also demonstrating compliance with the applicable numerical ownership limit based on the Commission's parent

market analysis, the applicant must show that it also complies with the ownership limits as determined by the contour-overlap methodology ordinarily applicable in undefined markets. The Commission adopted this presumptive waiver standard on an interim basis pending the outcome of this 2018 Quadrennial Review proceeding.

18. Accordingly, the Commission seeks comment on how to address the issue of embedded market transactions. If the Commission retains a Local Radio Ownership Rule, how should it apply going forward to radios station in markets that contain multiple embedded markets, currently New York and Washington, DC? Should the presumptive waiver standard become permanent? Should it be modified in any way? Should it apply to all current and future markets that contain multiple embedded markets, or should its application be limited to the two existing parent markets with multiple embedded markets? How do competition, diversity, and localism considerations affect the question? Embedded market designations can be updated and modified by Nielsen Audio as market conditions change, and Nielsen Audio's radio station customers can request the designation of a new embedded market. How could the Commission guard against purchasers taking advantage of an anticipated designation of a new embedded market in a manner that would thwart the purpose of the current ownership limits? For example, in the event that Nielsen Audio creates new, additional situations with multiple embedded markets within a larger parent market, should there be a waiting period before applicants can take advantage of that change in circumstance, similar to the waiting period applicable to changes in the stations reported as ''home'' to a Nielsen Audio Metro market? If the Commission adopts any change to its approach to embedded markets, should the change also apply to markets with a single embedded market? Is there a distinction between markets with one embedded market and markets with multiple embedded markets such that the Commission should vary its approach between those situations?

19. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission expressed its intent to consider in this 2018 Quadrennial Review an alternate NAB proposal that stations licensed in embedded markets with signal coverage of less than 50 percent of the parent market's population not be considered part of the parent market for purposes of local ownership limit compliance calculations. The Commission seeks comment on whether it should adopt such an approach or any other across-the-board rule changes regarding embedded markets. Is there a need to implement a rule change that carves out a blanket exception to the current methodology given that there are only two parent markets containing multiple embedded markets? Or is a permanent presumptive waiver standard an adequate solution given how narrow its use is likely to be? The Commission seeks comment on the potential advantages and disadvantages of these various approaches and invites proposals for other ways to address embedded market transactions.

20. *Minority and Female Ownership.* In the *2010/2014 Quadrennial Review Order,* the Commission found the current Local Radio Ownership Rule to be consistent with its goal of promoting minority and female ownership of broadcast radio stations, observing that the rule, while competition-based, indirectly promotes viewpoint diversity by facilitating ''the presence of independently owned broadcast radio stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.'' It pointed to AM subcaps in particular as elements of the rule that foster new entry. Because available data did not show that stricter limits would increase minority and female radio ownership, however, the Commission chose not to tighten the rule. Similarly, the Commission found no indication of a causal link between Congress' loosening of local radio limits in 1996 and the increase in ownership diversity since then that would justify loosening the rules. The Commission seeks comment on whether any new information has become available that would cause us to reevaluate these conclusions. The Commission also seeks comment on how retaining or modifying the Local Radio Ownership Rule might affect broadcast radio ownership and entry by small business owners, if at all.

21. *Local Television Ownership Rule.* The Local Television Ownership Rule allows an entity to own up to two television stations in the same Nielsen Designated Market Area (DMA) (a group of counties forming an exclusive geographic area to which the Nielsen Company assigns each broadcast television station) if: (1) The digital noise limited service contours (NLSCs) of the stations (as determined by § 73.622(e) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. With respect to the latter provision—the Top-Four Prohibition—an applicant may request that the Commission examine the facts and circumstances in a market regarding a particular transaction and, based on the showing made by the applicant in a particular case, make a finding that permitting an entity to directly or indirectly own, operate, or control two top-four television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission considers showings that the Top-Four Prohibition should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.

22. The Commission found in the *2018 Quadrennial Review Order on Reconsideration* that local television ownership limits remained necessary to promote competition among broadcast stations in local television markets, finding that such competition leads stations to invest in better and more locally tailored programming and to compete for advertising revenue and retransmission consent fees. The Commission also determined, however, that the existing rule required modification to ensure that television broadcasters could achieve efficiencies to make such improvements in an evolving video marketplace. The Commission therefore repealed the provision of the previous rule requiring at least eight independently owned television stations to remain in a DMA after any station acquisition in the DMA, finding that this Eight-Voices test was unsupported by the record or reasoned analysis and was no longer necessary in the public interest. The Commission also added flexibility to the application of the Top-Four Prohibition by adopting the case-by-case analysis mentioned above.

23. First, the Commission seeks comment on whether the current version of the Local Television Ownership Rule is necessary in the public interest as a result of competition. In earlier media ownership reviews, broadcasters argued that local television ownership restrictions prevent them from competing effectively, while other commenters supported retention of limits based on the need to prevent excessive consolidation of television stations due to the unique nature of their free, over-

the-air programming provided on spectrum licensed for public benefit. The Commission seeks comment on how developments in the video programming industry since the last quadrennial review have affected whether the Local Television Ownership Rule is necessary as a result of competition and to promote localism and viewpoint diversity among local broadcast television stations. The Commission seeks comment on whether promoting competition among television stations in local viewing markets continues to be the proper framework within which to consider the rule, and if so, what forms of competition it should take into account under such a framework. For instance, how, if at all, should the Commission consider competition among television stations for viewers, advertisers, retransmission consent fees, network affiliation, the provision of local news or other programming, the production or acquisition of programming, innovation, or any other form of competition?

24. The Commission also seeks comment on whether the Local Television Ownership Rule is necessary to promote localism or viewpoint diversity. The Commission has previously stated that a competition-based rule, while not designed specifically to promote localism or viewpoint diversity, may still have such an effect. Has the prior reliance on competition as the primary policy goal of the Local Television Ownership Rule also served as a proxy for preserving a certain level of localism or viewpoint diversity in local television markets that might otherwise be lost were we to find the rule no longer necessary for competition purposes?

25. The Commission seeks comment on whether a competition-based Local Television Ownership Rule promotes the production or provision of local programming. Localism has been a cornerstone of the Commission's broadcast regulation for decades, with the Commission finding that broadcast licensees have an obligation to air programming that is responsive to the needs and interests of their communities of license. Does promoting competition among broadcast stations incentivize stations to produce and improve local programming? Could or does competition from non-broadcast video sources, which have no local programming requirements, create the same incentives to produce and improve local programming?

26. If the Commission decides to retain the Local Television Ownership Rule, it will analyze the relevant parts of the rule to examine whether each particular provision similarly remains necessary in the public interest as a result of competition or whether it should be modified or eliminated. Thus, the Commission seeks comment on specific aspects of the rule's operation, including the relevant product market, numerical limits, and the Top-Four Prohibition, to assess whether these subparts remain necessary or whether any or all of them should be modified or eliminated. The Commission also asks whether developments in the video programming industry involving multicasting, satellite stations, low power stations, and the next generation transmission standard have any implications on the Local Television Ownership Rule or its subparts.

27. *Market Definition.* In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission found that a rule to preserve competition among local broadcast television stations was still warranted, but also noted that it was not free to retain the rule without adjustments to account for marketplace changes outside the local broadcast television market. The Commission also found that non-broadcast video offerings do not serve as meaningful substitutes for local broadcast television, and noted that video programming delivered by multichannel video programming distributors (MVPDs) is generally uniform across all markets, as is programming provided by online video distributors (OVDs). The Commission stated that unlike local broadcast stations, MVPDs and OVDs were not likely to make programming decisions based on conditions or preferences in local markets, but indicated that this conclusion could change in a future proceeding with a different record.

28. The Commission now seeks comment on relevant marketplace changes and whether and how it should take such changes into account. The Commission seeks comment on the appropriate product market for reviewing the Local Television Ownership Rule, including whether to include more than broadcast video programming and what market participants to consider. In light of the evolving video marketplace, the Commission also seeks comment on its prior findings in the *2010/2014 Quadrennial Review Order,* and whether and to what extent non-broadcast sources of video programming should be considered competitors to broadcast television stations. Do consumers consider broadcast television to be interchangeable with other sources of programming? If so, what other sources of video programming should be included in the analysis of a local product market? What factors should the Commission consider in analyzing non-broadcast sources of video programming? Should the Commission distinguish between linear (scheduled) and non-linear (*i.e.,* video-on-demand) distributors of video? In which product markets, if any, do non-broadcast video programmers compete with broadcast television programmers? Does broadcast television offer any programming for which there is no substitute available from non-broadcast video programmers? Based on Nielsen and NAB data, the Commission noted in the *Eighteenth Video Competition Report* the increasing number of households relying on broadcast rather than MVPD service. To what extent do consumers rely on broadcast television as their primary, or only, source of video programming? The Commission previously noted that broadband penetration is relevant when considering whether on-line platforms are meaningful substitutes for local broadcast. Is the availability of non-broadcast video comparable to that of broadcast television? Do viewers rely on or consume programming from local broadcast stations in a manner different from other sources of, potentially, non-local video programming? In addition, do any non-broadcast video programmers make programming decisions based on local markets or the actions of individual local television stations (*i.e.,* a cable operator deciding to carry local sporting events not covered by the local broadcaster)?

29. The Commission also found in the *2010/2014 Quadrennial Review Order* that arguments by broadcasters that advertisers no longer distinguish between local broadcast television and non-broadcast video programming when deciding how to spend on local advertising were not supported by the record. Thus, the Commission seeks comment on whether and to what extent non-broadcast sources of video programming should be considered competitors to broadcast television stations. The Commission also asks how advertisers select between local broadcast and non-broadcast sources of programming and seeks studies and data that it can use to assess substitutability in local advertising among all sources of video in a DMA. The Commission seeks comment and new data about whether and how various video programming providers compete for local advertising revenue.

30. Given the Commission's prior findings in the *2010/2014 Biennial Review Order* that competition within local markets can produce better

programming and programming tailored to local needs and interests from which viewers benefit, the Commission seeks comment on whether, in evaluating the Local Television Ownership Rule, it should consider sources of local news and other local programming as a relevant product market. What are the most prominent sources of local news and local programming beyond broadcast television? Should non-video providers of news and information—such as radio, newspapers, internet websites, and social media platforms—be examined in the product market analysis? To what extent do potential viewers rely for local news on these alternative sources? Given Knight Foundation reports that online-only local news websites have limited impact, are these sources originators of local programming, or do they simply aggregate or utilize content generated by traditional local news sources? Are non-broadcast sources of local programming available in all DMAs or are they just in major markets? Is the depth of any coverage of local issues by non-broadcast platforms consistent across DMAs? The Commission seeks comment on the availability and variety of local video programming in each Nielsen DMA and on how the Commission would, and if it should, evaluate local programming for purposes of any programming-based analysis. The Commission seeks comment on whether defining the local product market for our television ownership rules to include specific types of programming would raise First Amendment concerns.

31. What measures could the Commission use to assess competition among sources of local video programming or other local content? What data sources might the Commission use to determine which sources consumers consider substitutes? Given the lack of a single, accepted, industry-wide standard for measuring online viewership, how should the Commission account for various providers of news, information, and video programming to the extent that some entities, such as OVDs and websites, may lack an industry standard for measuring viewership and engagement?

32. The Commission also seeks comment on the relationship between its local television ownership market definition and any changes thereto, and the market definition and analysis used by DOJ, which examines local television broadcasters competing in the spot advertising market. The Commission stated in the *2010/2014 Quadrennial Review Order* that its market definition when evaluating broadcast television mergers is like DOJ's in that the scope of the Commission's rule is similarly limited to local television broadcast stations. DOJ's analysis, however, has historically focused on competition for advertising, whereas the Commission's analysis focuses on multiple factors, including audience share. Recently in evaluating the combination of Nexstar and Media General, DOJ also looked at competition for retransmission consent licensing fees in local television markets. The Commission seeks comment on whether and how DOJ's analytical framework should inform its own, and vice versa. Are there ways in which the Commission's current rule is either consistent or inconsistent with antitrust principles? Do other public interest considerations support the rule?

33. *Numerical Limit.* Currently, a broadcast licensee can own up to two television stations (a duopoly) in a DMA, subject to the requirements of the Local Television Ownership Rule. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that changes in the local television market demonstrated by the record were insufficient to justify either tightening or loosening this numerical limit. The Commission therefore seeks comment on whether subsequent changes in the video programming industry now support changes to the numerical limit. If the Commission finds that retaining a local television rule remains in the public interest, should it change the numerical limit on how many stations may be owned in a DMA?

34. *Top-Four Prohibition.* The Commission found in the *2010/2014 Quadrennial Review Order* that ratings data supported the Local Television Ownership Rule's focus on the top-four rated full power television stations in a market, that there typically remained a significant ''cushion'' of audience share points that separated the top-four stations in a market from the fifth-ranked station and below, and that the record supported potential harms associated with top-four combinations. The Commission seeks comment on the applicability of these previous conclusions based on new, updated ratings data and/or examples of existing commonly owned top-four station combinations. If the Commission retains a local television ownership rule, should the top four prohibition be retained or modified?

35. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission recognized that rigid application of the Top-Four Prohibition in all DMAs may not be supported by the unique conditions present in certain DMAs or with respect to certain transactions, and accordingly adopted a hybrid approach to allow applicants to seek a case-by-case examination of a proposed combination that would otherwise be prohibited by the Top-Four Prohibition. The Commission stated that the types of information applicants could provide on competition in the local market in such examinations included: (1) Ratings share data of the stations proposed to be combined compared with other stations in the market; (2) revenue share data of the stations proposed to be combined compared with other stations in the market, including advertising (on-air and digital) and retransmission consent fees; (3) market characteristics, such as population and the number and types of broadcast television stations serving the market (including any strong competitors outside the top-four rated broadcast television stations); (4) the likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances impacting the market, particularly any disparities primarily impacting small and mid-sized markets.

36. The Commission asks whether flexibility in applying the Top-Four prohibition remains necessary and, if so, whether the case-by-case approach is the most effective way to achieve it. If the Commission finds that a case-by-case analysis is the best approach, do the types of information listed in the *2010/2014 Quadrennial Review Order on Reconsideration* serve as reliable factors in determining whether a top-four combination would serve the public interest? If so, should some factors be weighed more heavily than others in the analysis? Are there factors in addition to the examples provided in the *2010/2014 Quadrennial Review Order on Reconsideration* that the Commission should consider? What kinds of data should licensees provide to support their showings? Should the Commission adopt a more rigid set of criteria for its case-by-case determination?

37. Alternatively, should the Commission avoid a case-by-case or hybrid approach and establish a bright-line test that would permit common ownership of two top-four stations in all cases, or in particular markets or circumstances? For example, should the Commission permit common ownership of the fourth-ranked station in a market and either the second-ranked station or third-ranked station in that same market? Should the Commission allow combinations between the second-ranked station or third-ranked station in the same market? Should such combinations only be permitted in

smaller markets where there is less advertising revenue available to support programming and station operations? The Commission also seeks comment on whether it should create a presumption for permitting common ownership of two top-four stations if certain conditions are met. What conditions should the Commission consider in determining if a combination would not negatively impact competition? For example, should the Commission presume that a combination is permissible if the combined stations' share of the audience and/or advertising market share does not exceed a certain threshold?

38. If the Commission either retains the case-by-case approach or adopts a bright-line test, it seeks comment on how to analyze competition in local television markets. In considering the effect of top-four combinations on local advertising markets, the Commission seeks studies that estimate the elasticity of demand for local advertising. In the absence of such studies, what data sources or types of data might the Commission use to assess substitutability in local advertising across dayparts, program types, and stations? What measures, in addition to viewership share, could be used to assess competition between stations in local programming? What data sources might we use to determine which programs or stations viewers consider substitutes?

39. A top-four combination may have different effects on competition among broadcast stations for viewers of different types of programming, for instance, local programming, network programming, and syndicated programming. Should the Commission weigh each competitive effect and, if so, how? If the Commission considers specific categories of programming, should it look at the viewership of each type of programming, the amount of revenue generated for the local station by each type of programming, both, or something else? Top-four combinations may also affect the quantity or quality of local programming available in the market. Although intended primarily to promote competition, does the Top-Four Prohibition also preserve, as a byproduct, a sufficient level of localism or viewpoint diversity in local markets? The Commission seeks comment on whether and how it should consider elimination of an independent local news operation or a reduction in local news programming.

40. The Commission also seeks comment on whether and how it should weigh any effect on retransmission consent negotiations in evaluating competitive effects under the Commission's case-by-case approach to evaluating top-four station combinations. Commenters in proceedings involving potential top-four station combinations consistently have raised the issue of potential retransmission consent fee increases because of reduced competition between stations and undue bargaining leverage for stations if commonly owned top-four stations are able to negotiate such fees jointly as a result of the combination. In its Nexstar-Media General review, DOJ also recognized that common ownership of two major broadcast network affiliates can lead to diminished competition in the negotiation of retransmission agreements with MVPDs in local television markets. The Commission therefore seeks comment on whether and how it should weigh the effect on retransmission consent negotiations in evaluating top-four station combinations under its case-by-case approach. Should the Commission maintain the Top-Four Prohibition for purposes of preventing any potential competitive harms caused by joint negotiation of retransmission consent fees by two commonly owned top-four stations in a DMA, and would such an approach be inconsistent with congressional intent in prohibiting joint negotiation only when conducted by non-commonly owned stations in the STELA Reauthorization Act of 2014?

41. If the Commission keeps the Top-Four Prohibition or a similar rule that relies on the ranking of stations by audience share or viewership, should any specific provisions of the rule be modified? The rule currently determines a station's in-market ranking based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research. The Commission seeks comment on whether this data point is still the most useful for accurately determining a station's ranking for purposes of the Top-Four Prohibition. Have there been changes in the industry that necessitate examining different data? The Commission also seeks comment on whether and how it should account for instances where a station makes use of multicast streams, satellite stations, or translators. Should the ratings of these stations or streams be combined with the ratings of the primary station or stream to determine the station's ratings in the DMA? Why or why not? Lastly, based on Commission staff review of Nielsen data, there are instances where noncommercial television stations have audience shares comparable to those of commercial stations. Should the Commission distinguish between commercial and noncommercial stations for purposes of the Top-Four Prohibition? Why or why not?

42. The Commission seeks comment on whether to provide clarification of the phrase ''at the time the application to acquire or construct the station(s) is filed.'' Should entities filing an application submit as support audience share data for the most recent month, week, or sweeps period in relation to the date when the application was submitted to the Commission? Should the time frame for the submitted data be required to show a longer period? For example, should the Commission require applicants to submit ratings data over a three-year period to demonstrate that a station truly is or is not ranked among the top-four stations in the DMA ''at the time the application to acquire or construct the station(s) is filed'' as suggested in the *2010/2014 Quadrennial Review Order on Reconsideration*? If not, should the Commission take another approach to prevent circumvention of the Top-Four Prohibition's requirements based on anomalous data? Should it rely on the most recent period solely as a presumption, which might be rebutted by interested parties?

43. Given the longstanding nature of the Top-Four Prohibition, much of the discussion in this section focuses on the continued applicability of that rule and ways that it might be adjusted or clarified to apply in the current video marketplace. The Commission also seeks comment on alternatives to the Top-Four Prohibition. Should common ownership of two stations in a market be permitted when at least one of the stations is not ranked among the top-three stations in the market, or among the top-two? What economic data support establishing such a top-three approach, considering the significant differences in national audience share between the top-four national networks and others? Should the Commission distinguish between stations located in larger Nielsen DMAs and those in mid- to small-sized DMAs by adopting a tiered approach to application of any ranking-based prohibition? Should common ownership be permitted when there is a certain number of non-broadcast local video programing sources in a DMA? The Commission seeks comment on how these and any other proposals supported by the record would promote and protect competition in local television markets.

44. *Multicasting.* As a result of the digital television transition, all full-power television stations have the ability to use their available spectrum to

broadcast not only their main program stream but also, if they choose, additional program streams—an activity commonly referred to as multicasting. In the *2010/2014 Quadrennial Review Order* the Commission distinguished between the ability to multicast and ownership of a separate broadcast station and declined to impose restrictions on local television station ownership based on the ability to multicast. Because the record indicated that dual affiliations involving two Big Four networks (ABC, CBS, Fox, and NBC) via multicasting were generally limited to smaller markets where there was an insufficient number of full-power commercial television stations to accommodate each Big Four network or where other unique marketplace factors led to creating the dual affiliation, the Commission declined to regulate dual affiliations through multicasting, even in instances where a licensee is affiliated with more than one of the Big Four networks. The Commission stated, however, that it would continue to monitor this issue and act in the future, if appropriate.

45. The Commission now seeks comment on how technical and other developments in the broadcast industry have affected multicasting. Are some multicast streams functioning as the equivalent of separate broadcast stations? Multicasting has enabled broadcasters to bring more programming to consumers, particularly in smaller, rural markets, by expanding the availability of the four major networks and newer networks. Based on Commission staff review of Nielsen data, there are at least several dozen DMAs where a single entity holds affiliations with two Big Four networks by using a multicast stream to carry the second signal. Thus, the Commission seeks comment on the characteristics of DMAs where major network affiliations are carried on multicast streams. Are there certain markets where this practice is more commonplace? Do dual affiliations with major networks remains limited to smaller markets or has the practice become more widespread? The Commission asks whether and how it should evaluate multicast streams for purposes of the Local Television Ownership Rule.

46. *Satellite Stations.* Television satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules that generally retransmit some or all of the programming of another television station, known as the parent station, which typically is commonly owned or operated with the satellite station. Satellite stations are exempt from the Local Television Ownership Rule, and the Commission seeks comment on their use to carry two Big Four networks in a market. For instance, how should the Commission treat a situation in which a licensee utilizes multicasting to air two Big Four networks on a parent station (*e.g.,* one on the primary stream and one on a multicast stream), and airs the same two Big Four networks on a satellite station? How prevalent is this practice, and is it consistent with the purposes behind allowing satellite stations in the first place, which are generally intended to bring over-the-air television service to unserved areas? Are there benefits to allowing this practice that outweigh any potential harms? The Commission seeks comment on whether this issue should be addressed through modification of the satellite exemption to the Local Television Ownership Rule or, alternatively, in the context of the satellite authorization process.

47. *Low Power Television Stations.* Changes in industry practice and technological advances may have extended the reach and enhanced the capabilities of low power and translator television broadcast stations that are currently exempt from local television ownership limits. Based on a review of Nielsen data by Commission staff, there are a significant number of low power stations affiliated with a Big Four network. Because of this affiliation, MVPDs are likely willing to carry the low power stations, which qualify for must-carry on cable systems under very limited circumstances, despite their status. If low power stations can in this way become the functional equivalent of full power stations in certain instances, should the Commission account for the number of low power television stations as part of its Local Television Ownership Rule in some way, and if so, how? For instance, should a low power station that is ranked among the top four stations in audience share in a DMA be counted as a top-four station for purposes of the Top-Four Prohibition?

48. *Next Generation Broadcast Television Transmission Standard.* Currently, the broadcast television industry is developing a new transmission standard called Advanced Television Systems Committee (ATSC) 3.0 with the intent of merging the capabilities of over-the-air broadcasting with the broadband viewing and information delivery methods of the internet, using the same 6 MHz channels presently allocated for DTV service. According to ATSC 3.0 advocates, the new standard has the potential to improve broadcast signal reception greatly, particularly on mobile devices and television receivers without outdoor antennas. ATSC 3.0 will enable broadcasters to offer enhanced and innovative new features to consumers, including Ultra High Definition (UHD) picture and immersive audio, more localized programming content, an advanced emergency alert system (EAS) capable of waking up sleeping devices to warn consumers of imminent emergencies, better accessibility options, and interactive services.

49. The Commission seeks comment on the implications, if any, of the new broadcast television transmission standard on the Local Television Ownership Rule. The Commission also seeks comment on whether any provisions of the Local Television Ownership Rule potentially could affect adoption and deployment of the new transmission standard. How, if at all, should the Commission in the context of local television ownership consider the decisions of television broadcasters to adopt voluntarily the ATSC 3.0 transmission standard?

50. *Broadcast Spectrum Auction.* In the *2010/2014 Quadrennial Review Order,* the Commission stated that it could not yet determine how the incentive auction would affect the Local Television Ownership Rule. On April 13, 2017, the Commission released a public notice announcing the results of the reverse and forward auctions and the repacking of the broadcast television spectrum. Pursuant to the statute authorizing the incentive auction, that public notice marked the auction's completion and the start of the 39-month post-auction transition period. Given completion of the auction and the subsequent surrender of spectrum and/or initiation of channel-sharing agreements, the Commission seeks comment on whether the auction's effects on local television ownership have any implication on retention or modification of the Local Television Ownership Rule.

51. *Shared Service Agreements.* In the *2010/2014 Quadrennial Review Order,* the Commission adopted a definition of shared service agreements (SSAs) and, despite opposition from broadcasters, a requirement that commercial television stations disclose SSAs by placing them in their online public inspection files. The Commission also found it lacked knowledge about the content, scope, and prevalence of SSAs that kept it from evaluating the impact of these agreements, if any, on its policy goals with respect to broadcast ownership. The *2010/2014 Quadrennial Review Order on Reconsideration* upheld the disclosure requirement, which took effect on March 23, 2018. The Commission now seeks comment on

what action, if any, it should take on SSAs in the context of this 2018 review of the Local Television Ownership Rule. Should the Commission retain or eliminate the SSA filing requirement? What, if anything, have commenters learned from filing the agreements so far?

52. *Minority and Female Ownership.* The Commission stated in the *2010/2014 Quadrennial Order* that, while the Local Television Ownership Rule promotes competition among broadcast television stations in local markets and is not meant to preserve or create specific amounts of minority and female ownership, the rule nevertheless promotes opportunities for diversity in local television ownership. The Commission concluded that the competition-based rule helps to ensure the presence of independently owned broadcast television stations in the local market, thereby indirectly increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants. The record held no data indicating that the duopoly rule has reduced minority ownership or suggested that a return to the single station per licensee rule would increase ownership opportunities for minorities and women. While the data did indicate an increase in minority ownership following relaxation of the Local Television Ownership Rule, there was no evidence in the record that established a causal connection. The Commission now asks how retaining, modifying, or eliminating the local television rule would affect broadcast television ownership and entry by minority and female owners, if at all. The Commission seeks data and an updated record on the effects of the Local Television Ownership Rule on minority and female broadcast ownership and entry. Finally, the Commission seeks comment on how retaining or modifying the rule might affect broadcast television ownership and entry by small business owners, if at all.

53. *Dual Network Rule.* The Dual Network Rule permits common ownership of multiple broadcast networks, but effectively prohibits a merger between or among the Big Four networks. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that the Dual Network Rule continues to be necessary in the public interest to promote competition and localism. With respect to competition, the Commission found the rule necessary to promote both competition in the provision of primetime entertainment programming and the sale of national advertising. With respect to localism, the Commission found that the rule was necessary to preserve the balance of power between the Big Four networks and their local affiliates.

54. In conducting its analysis of whether the Dual Network Rule remains necessary, the Commission traditionally has considered broadcast networks as participating in the video marketplace in two ways: (1) Assembling and distributing a collection of programming suitable for large, national audiences, and (2) selling advertising based on this programming to large, national advertisers. Does the Dual Network Rule continue to be relevant to competition or network behavior in either or both of these segments? The Commission concluded in the *2010/2014 Quadrennial Review Order* that ''the primetime entertainment programming provided by the Big Four broadcast networks and national television advertising time are each a distinct product—the availability, price, and quality of which could be restricted, to the detriment of consumers, if two [Big Four broadcast networks] were permitted to merge.'' Does this conclusion remain valid? The Commission also generally seeks comment on whether the Dual Network Rule remains necessary to promote its goals of competition, viewpoint diversity and localism, and on whether the benefits of the rule outweigh any costs.

55. Regarding viewership, in the *2010/2014 Quadrennial Review Order* the Commission found, based on Nielsen data, that no cable programming could deliver primetime audiences on par with, let alone greater than, the primetime audiences delivered by the Big Four networks. The Commission's *Eighteenth Video Competition Report,* based on 2015 data, showed that broadcast affiliates still draw the largest share of total day and prime time viewing audiences in relation to independent stations and non-commercial and cable networks. The *2010/2014 Quadrennial Review Order* also found a continued wide disparity in the advertising rates and revenue earned by the Big Four networks and other broadcast and cable networks. The Commission seeks more current data on these topics. Do these or other recent developments have any implications for the Commission's competition rationale underlying the Dual Network Rule?

56. The Commission also found in the *2010/2014 Quadrennial Review Order* and in previous reviews of the Dual Network Rule that the Big Four networks operate as a ''strategic group'' in the national advertising market and that they largely compete among themselves for the most significant portion of the national advertising market, namely advertisers that seek to reach national mass audiences. The Commission further found that the programming provided by the Big Four networks was a distinct product that, when compared to other broadcast and cable programming, had a unique ability to regularly attract large prime-time audiences and thus command higher advertising rates. Does the Commission's ''strategic group'' finding still hold true? Given the increasing number of video programmers in today's market, as well as the increasing popularity of their programming, is network broadcast programming still a distinct product? Does nightly network news programming, or any other programming, distinguish the broadcast networks, or are consumers now turning to other news or programming sources that remove this distinction? Are there other producers of mass audience programming such that a merger between two of the Big Four networks would no longer harm competition for national advertising? In the past, the Commission reviewed programming audience shares and the advertising rates and revenues of various programmers in making this determination. Should the Commission continue to rely on these data, or are there other data or metrics it should consider? Are there better sources of relevant data than the Commission has considered in the past?

57. One of the biggest changes in the video programming market has been online distribution of programming from a variety of sources. Today, OVDs—including linear multichannel streaming services, both those from social media companies and other online platforms, and direct-to-consumer offerings by broadcast networks themselves—reach millions of consumers. Digital advertising on these or other online platforms is steadily increasing in market and revenue share. How, if at all, have these changes affected competition for national broadcast television advertising? The Commission seeks comment on whether and how any such changes should affect our Dual Network Rule.

58. The Commission also seeks comment on whether recent developments in the video programming and national advertising markets suggest that the Dual Network Rule should be modified to promote competition or eliminated. If the rule is modified, what changes should we make? Should networks be removed from or added to the rule? If so, which networks? What would be the basis for eliminating the

rule? If the rule were eliminated, would antitrust statutes or any other statutes, rules, or policies serve as a sufficient backstop to prevent undue consolidation between or among the Big Four networks? Why or why not?

59. The Commission also seeks comment on whether The Dual Network Rule remains necessary to promote localism, in particular by maintaining a balance of power between the Big Four networks and their local affiliates. To reach the largest possible national audience, the Big Four networks acquire their own broadcast stations, usually in the largest television markets, and enter into affiliation agreements with station owners throughout the rest of the country. Through affiliation, a model which has existed for more than fifty years, networks benefit through wide delivery of their programming, and network affiliates benefit by gaining access to high-quality programming. The Commission has found in previous media ownership rule reviews that the network-affiliate model balances competing interests: Networks have an economic incentive to ensure that programming appeals to a mass, nationwide audience while affiliates have an economic incentive to tailor programming to their local audiences and influence network programming choices to ensure that the programming serves local needs and interests. Affiliates also may decide individually to preempt network programming for other programming better serving the local audience. The Commission now seeks comment on whether these specific conclusions, and the Commission's general conclusion that the Dual Network Rule is needed to keep the balance of bargaining power between the Big Four networks and their affiliates, remain true in today's video marketplace.

60. Evidence submitted in the Commission's review of the Comcast-NBCU merger suggested that broadcast network affiliation remains sought after and critical to many local stations' success. Also, while advertising revenue remains essential to broadcast stations, the *Eighteenth Video Competition Report* showed that retransmission consent revenues now represent a much greater proportion of total revenue for many broadcast stations than previously, and stations with Big Four network affiliations often receive the lion's share of retransmission consent dollars from MVPDs in a local market. The *Eighteenth Video Competition Report* also showed that, whereas local affiliates were once paid by networks to distribute network programming, today networks seek and receive compensation from their affiliates in the form of reverse compensation payments. According to one estimate by SNL Kagan, total industrywide reverse compensation payments paid by affiliates to broadcast networks have increased from roughly $300 million in 2010 to $2.9 billion in 2017. There is some evidence too that networks now exert leverage through oversight or approval of affiliate retransmission consent negotiations, and although not common, in some instances in recent years a network dropped or threatened to drop a local affiliate to launch a network O&O station in the same market. To what extent do networks extract a share of retransmission consent payments received by their affiliates? How, if at all, should the Dual Network Rule account for these or other recent changes to the network/affiliate relationship?

61. In addition, the rise of online video options in recent years also may have altered the network-affiliate dynamic. As stated above, OVDs now reach millions of consumers, creating new opportunities for networks to achieve widespread distribution without the direct involvement of network affiliates. In the broadcast-MVPD world of retransmission consent, local affiliates may have some recourse against broadcast networks bypassing their affiliates in this manner by negotiating for, and if necessary enforcing via Commission rules, contractual network non-duplication rights, which protect a broadcast station's right to be the exclusive distributor of network programming within a specified geographic zone. By contrast, in the world of online video distribution, local affiliates lack a comparable regulatory backstop. The ability of networks to achieve online distribution of network programming in a local market, without the need for local affiliates to consent, may give networks some additional leverage in the network-affiliate relationship that did not exist in the pre-online video world. What implications, if any, do developments related to the growth of online video distribution have for the Dual Network Rule and its underlying localism rationale?

62. As the Commission has previously noted, the Dual Network Rule is intended to preserve the ability of local affiliates to advocate for local interests in programming decisions. Would a Big Four network merger reduce the ability of a network affiliate to use the availability of other top, independently-owned networks as a bargaining tool to influence programming decisions of its network, including the affiliate's ability to engage in a dialogue with its network over the suitability for local audiences of either the content or scheduling of network programming? Have changes discussed above, including the growth of online video or increased reverse compensation and retransmission consent fees, affected bargaining between networks and affiliates on programming and scheduling?

63. Considering the longstanding existence of the Dual Network Rule, has localism increased, decreased, or remained roughly the same over time? Are there recent examples where local affiliates have influenced network programming to better serve local needs? Are there other metrics by which we can assess the effect of the Dual Network Rule on localism? Have other changes affected the network/affiliate relationship, such that the Commission would need to adjust assumptions made in previous reviews of the Dual Network Rule? For instance, has the growth over the last two decades of station groups not owned and operated by networks changed the dynamic between networks and their affiliates? Do recent changes affecting the network-affiliate relationship suggest that the Dual Network Rule should be modified, rather than being retained or eliminated, to promote localism? If so, what modifications should we make that would better promote localism?

64. *Minority and Female Ownership.* The Commission concluded in the *2010/2014 Quadrennial Review Order* that, given the Dual Network Rule's unique focus on mergers involving the Big Four networks rather than ownership limits in local markets, the rule would not be expected to have any meaningful impact on minority and female ownership levels. The Commission seeks comment on whether and how market or other changes since its last media ownership review may have affected this conclusion. The Commission also seeks comment on how retaining, modifying or eliminating the Dual Network Rule would affect broadcast television ownership and entry by minority and female owners, if at all. Finally, the Commission seeks comment on how retaining or modifying the Dual Network Rule might affect broadcast television ownership and entry by small business owners, if at all.

65. *Diversity Related Proposals.* The *NPRM* also seeks comment on three proposals for increasing media diversity advanced by MMTC in prior proceedings. These three proposals were distilled from a larger list based on guidance from the Third Circuit in its decisions and Commission staff, and the Commission already has adopted two

additional proposals from this list. The three proposals the Commission now considers are: (1) Extending cable procurement requirements to broadcasters; (2) developing a model for market based tradable ''diversity credits'' to serve as an alternative method for adopting ownership limits; and (3) adopting formulas aimed at creating media ownership limits that promote diversity.

66. *Extending Cable Procurement Regulation.* The 1992 Cable Act states that a cable system must: ''[e]ncourage minority and female entrepreneurs to conduct business with all parts of its operation.'' § 76.75(e) of the Commission's rules explains that this requirement may be met by, for example, recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests. To help determine whether this requirement can be applied to broadcasters, the Commission seeks comment on the threshold issue of whether, because Commission cable procurement authority flows directly from the 1992 Cable Act, it has authority to adopt a procurement requirement for broadcasters. The Communications Act imposes equal employment opportunity obligations on broadcasters, but no procurement requirements. Does this difference between the two statutes reflect any limitation on the Commission's otherwise extensive Communications Act Title III authority over broadcasters? The Commission seeks comment on potential sources of Commission authority, including any ancillary authority, to extend procurement regulations to the broadcast industry. The Commission also seeks comment on whether, by specifically identifying minority/female entrepreneurs, the proposal would classify these entrepreneurs differently from others such as to trigger heightened judicial scrutiny. If heightened scrutiny is triggered, how would such a rule comport with the Commission's previous finding in the *2010/2014 Quadrennial Review Order* that it lacked the evidence to satisfy the heightened scrutiny needed to justify race- or gender-based broadcast regulation? Would inclusion of any type of audit, review, or enforcement mechanism pursuant to which the Commission considered broadcasters' compliance with the requirement be problematic or interpreted as tacitly encouraging broadcasters to favor certain entrepreneurs to the detriment of others in a way that would trigger heightened scrutiny?

67. If a broadcast procurement rule as proposed by MMTC would trigger heightened judicial scrutiny, can any proposed rule be modified to be race- and gender-neutral to avoid the potential legal impediments raised by a race- and gender-conscious broadcast procurement rule? In such a case, how would the requirement be stated? Would a race- and gender-neutral broadcast procurement rule be as effective as a race- and gender-conscious broadcast procurement rule?

68. The Commission also seeks comment on MMTC's assertion in the *2010/2014 Quadrennial Review* that § 76.75(e) ''has been a springboard for the migration of minority and women entrepreneurs into operating and ownership positions in the cable and satellite industries[,]'' and has ''contributed mightily to the economic success of scores of minority and women owned businesses engaged in banking, broker/dealer services, construction, fiber and satellite dish installation, programming, legal services, accounting, and much more.'' In deciding whether to adopt additional regulations or extend a regulation to additional industries, it is important to assess the likelihood that the regulation would have the desired effect of increasing minority and female participation in the broadcast industry. Consequently, the Commission seeks data on the degree to which § 76.75(e) has promoted minority and women businesses and whether any broader trends in the intervening two decades since enactment of the cable procurement requirement have played a role in fostering greater minority and female participation in the cable industry. In this regard, we also seek comment on the relative benefits and costs of extending § 76.75(e) to the broadcast industry. How can the value of these benefits and costs be measured?

69. The Commission also notes the significant differences between the cable and broadcast industries and seeks comment on the feasibility—and utility—of imposing a § 76.75(e)-type requirement on the broadcast industry. For example, unlike broadcasters, cable providers must construct and continuously maintain and upgrade a significant physical plant and therefore purchase goods and services on a much larger scale than broadcasters. Over-the-air delivery of broadcast radio and television does not require laying fiber or coaxial cable to every home and, in most instances, deploying customer premise equipment, necessitating regular purchase of equipment and material at significant volume. Constructing and maintaining extensive cable networks also requires employing and contracting for far more labor than is required in the broadcast sector. Unlike broadcasters, cable operators maintain a direct billing relationship with their customers, offering more contracting opportunities—in the form of outsourced billing or customer service functions—than the broadcast industry. Accordingly, the Commission seeks input on the feasibility and utility of imposing a cable procurement regulation on broadcasters.

70. *Develop a Model for Market-Based Tradeable Diversity Credits.* In reply comments submitted in the 2002 Biennial Review, a group called the Diversity and Competition Supporters (DCS) advanced several initiatives that it asserted would foster diversity, including tradeable ''diversity credits'' for the broadcast industry. While diversity credits weren't well defined, the idea appears to involve creating a system of credits tradable in a market-based system and redeemable by a broadcaster buying additional stations to offset any increased concentration resulting from a proposed transaction. DCS offered diversity credits as a potential alternative to the test then in use by the Commission requiring that, for a broadcaster to own two stations in a market, eight independent voices must have remained in the market post-transaction. DCS suggested that economists (presumably both at the Commission and beyond) could explore the concept and stated its hope ''that other parties will attempt to design a market-based Diversity Credit program.'' In 2004, a member of the Transactional Transparency Subcommittee of the FCC Advisory Committee on Diversity in the Digital Age further developed the diversity credits concept, suggesting credits linked to each broadcast license based on the extent to which the licensee was ''socially and economically disadvantaged'' and that, if a transaction promoted diversity (*e.g.,* the breakup of a local ownership cluster or the sale of a station to a socially and economically disadvantaged business), the Commission would award the seller additional diversity credits ''commensurate with the extent to which the transaction promotes diversity.'' Similarly, according to this 2004 proposal, if a transaction reduced diversity (*e.g.,* by creating an ownership combination or growing an ownership cluster), the Commission would require diversity credits from the buyer, commensurate with the extent to the which the transaction reduced diversity.

Finally, according to the 2004 proposal, if a company seeking approval of a transaction held insufficient diversity credits to gain approval, the company would need to purchase diversity credits on a secondary market from third-party companies. The proposal did not define either ''promoting'' or ''reducing'' diversity, or how the impact of a transaction would be measured or quantified. MMTC continued to advocate for tradable diversity credits in the *2010/2014 Quadrennial Review,* asking the Commission to explore their feasibility by issuing a Notice of Inquiry. Therefore, the Commission now seeks comment on whether and how it should create a system of tradable diversity credits that would foster ownership diversity in broadcasting.

71. The Commission first seeks comment on its authority to adopt a tradeable diversity credit system within its structural broadcast ownership rules or otherwise. While the Communications Act contains no explicit authority to create or rely on such a program, when presenting the idea, DCS asserted that the sections 303(f), (g), and (r) of the Communications Act provided authority to implement tradable diversity credits. Are the sections cited by DCS applicable to such credits?

72. Assuming it has the required authority, the Commission seeks comment on the feasibility of relying on determinations about social and economic disadvantage given its concerns, expressed in the *2010/2014 Quadrennial Review Order,* about relying on such determinations. As proposed, the allocation of diversity credits was based on the extent to which the licensee could be considered ''socially and economically disadvantaged.'' How should the term ''socially and economically disadvantaged'' business (SDB) be defined? The 2004 proposal stated that, ''[m]inority status could be a factor in qualifying as an SDB if the Commission finds through rulemaking that minorities, under certain conditions, are socially and economically disadvantaged in the broadcasting industry because of their race[,]'' but did not provide any guidance about when an individual might or might not qualify on the basis of race. In the *2010/2014 Quadrennial Review Order,* the Commission found that the record did not establish a basis for race-conscious remedies and concluded that such measures were unlikely to withstand review under the equal protection component of the Constitution's due process clause. Thus, the Commission, unlike the Small Business Administration (SBA), declined to adopt an SDB eligibility standard that would have recognized the race and ethnicity of applicants, or any other race- or gender-conscious measure. Given the Commission's previous findings and conclusions, can it adopt a diversity credit program that considers race or gender, or other protected classes, in a manner that could withstand equal protection review? Commenters advocating for such a program should explain in detail, based on relevant judicial precedent and existing empirical data, how circumstances have changed such that the Commission could now overcome the significant evidentiary issues that it previously found would need to be resolved to adopt race- or gender-based policies that could withstand heightened judicial scrutiny.

73. If the socially and economically disadvantaged concept in the 2004 proposal was a precursor to the Overcoming Disadvantages Preference (ODP) concept that MMTC has advanced in subsequent Commission rulemaking proceedings, the Commission in the *2010/2014 Quadrennial Review FNPRM* assessed the ODP concept and stated concerns that the Commission lacks the resources needed to conduct the individualized reviews central to ODP. The Commission has similar concerns about the administrative and practical challenges of developing, implementing and applying a diversity credits program. The 2004 proposal suggested that the program rely on ascribing a diversity credits number to each broadcast license or possibly each licensee. Who would make that allocation of diversity credits, and on what criteria would the Commission or other arbiter determine the number of credits to be awarded to each license or licensee?

74. Such a program also raises potentially complicated definitional issues. How would the Commission define ''diversity'' in this context? In the 2002 Biennial Review Order, the Commission described several types of diversity, focusing on viewpoint diversity as the relevant touchstone for purposes of the structural media ownership rules. Would a diversity credit system have as its goal fostering viewpoint diversity, ownership diversity, both forms of diversity, or some other type of diversity?

75. Once diversity is defined, how would parties—or the Commission—determine, qualitatively or quantitatively, whether a transaction promotes or harms diversity? How would the degree to which the transaction harms or benefits diversity be quantified, such that the number of credits awarded for, or required before approval of, such a transaction could be determined? For example, would the impact on diversity vary depending on the size of the market, the number of operators therein, or the characteristics of the stations involved in the transaction? Would a requirement that parties remit to the Commission a certain number of diversity credits to receive approval of a transaction replace the Commission's existing structural broadcast ownership rules, which are based primarily on other policy goals, such as competition and localism? Or would compliance with the diversity credit regime be an additional requirement before a transaction were permitted?

76. Recognizing that diversity credits could be used as a form of currency in the broadcast market, how could the Commission effectively test such a scheme to ensure it would not lead to any unintended consequences? Developing and implementing a system that ensures that the award of diversity credits leads to the desired result—increasing diverse ownership in the broadcast market—rather than inadvertently skewing the market towards an unintended outcome, including greater concentration or loss of localism and viewpoint diversity, would seem to be a particular challenge. The Commission seeks comment on how to address these issues.

77. *Tipping Point Formula and Source Diversity Formula.* In 2002, MMTC proposed a ''tipping point formula'' for use in the local radio market in lieu of the Commission's now-abandoned practice of ''flagging'' radio transactions that, after initial analysis based on advertising revenue, approached a level of local concentration that raised public interest concerns about preserving diversity and competition. In 2003, DCS proposed a ''source diversity formula'' for use in the broader media market that seemed to be an attempt to quantify the benefit derived from increased viewpoint diversity. As with diversity credits, the Communications Act provides no explicit authority to adopt or apply these formulas, and the Commission seeks comment on possible sources of such statutory authority. Moreover, because MMTC and DCS have provided little update to the formulas since proposing them, the Commission seeks input generally on their relevance in today's marketplace. The formulas also raise administrative and practical concerns on which the Commission seeks comment, as discussed below.

78. MMTC's tipping point formula attempted to determine when a proposed transaction would create an entity that could control so much advertising revenue that ''well run independents'' could not survive or offer ''meaningful local service'' (all undefined). The formula's asserted goal was to assess how much ''revenue'' an ''independent'' would need on average to survive in a given market, with this number then being multiplied by the number of ''independents'' in that market. Because the Commission's abandoned flagging approach relied on advertising revenues, the term ''revenue'' in MMTC's tipping point formula appears also to refer to advertising revenue. MMTC essentially suggests that the Commission should bar any transaction that would reduce the revenue available to support independent operators in a market to an amount below what could sustain those operators. Stated differently, a broadcaster would not be permitted to acquire competing stations in a market if the purchase would create revenue so great as to leave insufficient revenue for the independents in the market. MMTC provided the following variables as inputs for its formula, as well as the formula shown below:

MR: Market revenue.

MR1: Amount of market revenue drawn by largest platform.

MR2: Amount of market revenue drawn by second largest platform.

IN: Number of independent stations in the market.

SU: Minimum fixed cost for an independent station to stay on the air.

VFSU: Variability Factor for Survival Operations, reflecting the average amount of revenues per independent station that must be available in the market, collectively, to take account of variations among the independent stations and thereby ensure that well-run weak independents stay on the air.

LS: Minimum additional cost, beyond SU, for an independent station to offer a meaningful local service.

VFLS: Variability Factor for Local Service reflecting the average amount of revenue per independent station that must be available in the market, collectively, to take account of variations among the independent stations and thereby ensure that well-run weak independents remain viable.

LSTP: Local Service Tipping Point, *i.e.,* the point at which, if the top two station groups control more revenue, independents will begin to lose their ability to offer meaningful local service.

SUTP: Survival Tipping Point, *i.e.,* the point at which, if the top two station groups control more revenue, independents will be unable to meet their fixed operating costs and must, therefore, sell out or go dark.

Based on these inputs, according to MMTC, the Local Service Tipping Point is the point at which: IN (SU + VFSU + LS + VFLS) = MR − (MR1 + MR2), and the Survival Tipping point is the point at which: IN (SU + VFSU) = MR − (MR1 + MR2). In presenting these variables, MMTC noted that ''[t]he cost of maintaining a station on the air varies somewhat depending on local market factors[,]'' that such regional or local differences ''can be designed into a formula by indexing a market's cost of living relative to the national average[,]'' and that such issues could be addressed in a negotiated rulemaking involving all interested parties.

79. We seek comment on the various terms used in the formula. For example, how should the terms ''independent'' and ''platform'' be defined in the context of today's radio marketplace? How should the terms ''well-run independent'' and ''well-run weak independent'' be defined? What objective criteria can we apply to distinguish between a ''well-run independent'' and a ''well-run weak independent'' to ensure that use of a tipping point formula does not prop up stations that are either poorly managed or simply not airing programming that responds to the community's interests? What is meant by ''meaningful local service''? We also seek comment on whether any determinations about how well a station is run or the concept of ''meaningful local service'' might create First Amendment concerns.

80. MMTC's formula appears to rely on advertising revenues. If so, how would the Commission and potential applicants obtain reliable advertising revenue for all radio stations? If another type of revenue is more appropriate, what data would the Commission rely on to obtain information about this other revenue? How should the concept of ''fixed operating costs'' be quantified? How should the Commission account for local and regional cost differences?

81. Finally, the Commission seeks comment on what seems to be the fundamental premise behind MMTC's tipping point formula: that retaining independents (however that term is defined) in a market maintains diversity (however that term is defined). We also invite commenters to address any other issues that they believe are raised by the tipping point formula proposal.

82. DCS submitted its source diversity formula in response to a challenge from then-Chairman Powell to derive an ''HHI [Herfindahl-Hirschman Index used to measure market concentration] for Diversity.'' The formula appears to seek to measure the level of consumer welfare derived from viewpoint diversity in the radio and television broadcast market, and DCS suggested it could be a ''thermometer'' to determine whether ''a national or local market manifest[s] strong diversity, moderate diversity, or slight diversity.'' DCS proposed that the Commission conduct a negotiated rulemaking to determine what significance to accord to various ''temperature readings'' on this thermometer, *i.e.,* what temperatures would reflect ''poor health,'' or ''strong health.'' DCS appeared to suggest that the source diversity formula could be used in lieu of the Commission's now-repealed ''eight voices'' test.

83. DCS depicted the source diversity formula as shown below with the following variables: X = consumer welfare derived from viewpoint diversity; p = a program consumed from a particular source; g = the number of programs from a particular source that are available for consumption; C = the number of consumers consuming a particular program; T = consumers' mean media consumption time devoted to the absorption of viewpoints in a particular program; Z = consumers' mean attentiveness to a particular program; m = a source (including all outlets owned by that source); and n = number of differently owned sources offering programs consumed. The formula as proposed was:

$$X = \mathrm{n}^{1+(\frac{1}{n})} \mathop{\hat{a}}_{m=1}^{n} \left(\mathop{\hat{a}}_{p=1}^{g} CTZ \right)$$

DCS acknowledged that the formula was imperfect and would need testing and validation before deployment.

84. The formula raises several fundamental questions. Is the formula sufficiently comprehensive for commenters to gauge without additional explanation whether it can provide a meaningful assessment of consumer welfare and viewpoint diversity in a particular market? Are there terms used in the formula inputs that require definition prior to any assessment of the formula's utility? For example, do terms such as ''source'' and ''program'' need to

be defined before analyzing the formula? Are there other terms that need defining? How will the formula inputs be obtained? For example, we seek comment on how to capture inputs such as ''consumers' mean attentiveness to a particular program'' and ''consumers' mean media consumption time devoted to the absorption of viewpoints in a particular program.'' How should the Commission determine the level of diversity to ascribe to various formula results (*e.g.,* ''strong diversity,'' ''moderate diversity,'' or ''slight diversity'')? Finally, the Commission invites commenters to address any other issues that they believe are raised by the source diversity formula.

85. *Cost-Benefit Analysis.* For the three structural media ownership rules and all of the diversity-related proposals discussed above, the Commission seeks comment on how to compare the benefits and costs associated with retaining, modifying or eliminating the rule or adopting the diversity-related proposal, with any proposed modification to the proposal. Commenters supporting modification or elimination of any rule or adoption of any proposal should explain the anticipated economic impact of any proposed action and, where possible, quantify benefits and costs of proposed actions and alternatives. Do the current rules create benefits or costs for any segment of consumers? Do the rules create benefits or costs for any segment of the industry that should be counted as social benefits or costs rather than transfers from one segment of the industry to another? How do the rules create these benefits and costs, and what evidence supports this explanation? How can the value of these benefits and costs be measured for parties receiving them? What factors create uncertainty about the existence or size of these benefits and costs, and how should the Commission's economic analysis take these uncertainties into account?

86. How would elimination of any rules alter the benefits and costs? What are the comparative benefits and costs of modifying any rule rather than eliminating it entirely? For instance, would loosening the current local television or local radio ownership restrictions, or allowing certain of the Big Four networks and not others to merge lead to any consumer benefits, such as increased choice, innovation, or investment in programming? What amount of additional scale would be required to realize such benefits? Would these benefits conflict with, or come at a cost to, our traditional policy goals of competition, viewpoint diversity or localism, and if so, how should we measure and evaluate these tradeoffs? What are the comparative benefits and costs of tightening the current restrictions? The Commission asks commenters to support their claims about benefits and costs with relevant economic theory and evidence, including empirical analysis and data.

Procedural Matters

87. *Ex Parte Rules—Permit-But-Disclose.* The proceeding that this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules, or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Commission's Electronic Comment Filing System (ECFS) available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

88. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using ECFS.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

89. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

90. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this *NPRM,* with a distinct heading designating them as responses to the IRFA. In

addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA.

91. *Paperwork Reduction Act.* This *NPRM* seeks comment on whether the Commission should adopt new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, invites the public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

93. *Additional Information.* For additional information on this proceeding, please contact Brendan Holland of the Media Bureau, Industry Analysis Division, *Brendan.Holland@fcc.gov,* (202) 418–2757.

Initial Regulatory Flexibility Analysis

94. *Need for, and Objective of, the Proposed Rules.* This *NPRM* begins an examination of the Commission's media ownership rules and possible changes to these rules. As discussed in the *NPRM,* the Commission is required by statute to review its media ownership rules every four years to determine whether they ''are necessary in the public interest as the result of competition.'' Consistent with the Communications Act, the Commission must examine its media ownership rules and consider whether they continue to serve our public interest goals of competition, viewpoint diversity and localism, or whether they should be modified or eliminated. Specifically, the *NPRM* examines the three remaining media ownership rules, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule. In addition, the *NPRM* seeks comment on several proposals that were advanced in previous rulemakings and which the Commission indicated it would examine further in the context of this review of its structural ownership rules. These proposals, to extend cable procurement requirements to broadcasters, develop a model for market-based, tradeable ''diversity credits'' to serve as an alternative method for adopting ownership limits, and adopt formulas aimed at creating media ownership limits that promote diversity, are presented by their proponents as initiatives that could further the Commission's diversity goal. The Commission anticipates that these initiatives, if ultimately adopted, might benefit small entities.

95. *Legal Basis.* The proposed action is authorized under sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996.

96. *Description and Estimate of the Number of Small Entities to which the Proposed Rules Apply.* 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 rule revisions, 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 (SBA). 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

97. *Television Broadcasting.* According to the U.S. Census Bureau 2017 NAICS Definitions, this U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more. Based on this data, the Commission estimates that the majority of commercial television broadcast stations are small entities under the applicable size standard.

98. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,349. Of this total, 1,248 stations (or about 92.5 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November 2018, and therefore these stations qualify as small entities under the SBA definition.

99. *Radio Broadcasting.* This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 firms in this category operated in that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 and 26 with annual receipts of $50 million or more. Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

100. Apart from the U.S. Economic Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,426 stations and the number of commercial FM radio stations to be 6,737, for a total number of 11,364. Of this total, 11,355 stations (or 99.9 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November 2018, and therefore these stations qualify as small entities under the SBA definition.

101. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or

television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio or television station from the definition of small business on this basis and is therefore possibly over-inclusive.

102. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* The proposals, if ultimately adopted, would require modification of several Commission forms and their instructions: (1) FCC Form 301, Application for Construction Permit for Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission also would modify, as necessary, other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303–S, Application for Renewal License for AM, FM, TV, Translator, or LPTV Station and Form 323, Ownership Report for Commercial Broadcast Station. The impact of these changes will be the same on all entities, and we do not anticipate that compliance will require the expenditure of any additional resources or place additional burdens on small businesses.

103. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant—Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

104. The *NPRM* begins a statutorily mandated examination of whether three remaining media ownership rules remain in the public interest as a result of competition and promote the Commission's longstanding policy goals of competition, viewpoint diversity and localism. The *NPRM* acknowledges new technologies and changed marketplace conditions that affect whether the rules remain in the public interest considering competition and the need to allow broadcasters, including small entities, to achieve the economies of scale and scope necessary to continue to compete in a changed marketplace. The *NPRM* considers measures designed to minimize the economic impact of any changes to these rules on firms generally, as well as initiatives designed to promote broadcast ownership opportunities among a diverse group of owners, including small entities. The *NPRM* also invites comment on the effects of any rule changes on different types of broadcasters (*e.g.,* independent or network-affiliated), the benefits and costs associated with any proposals, and any potential to have significant impact on small entities.

105. The *NPRM* proposes no new reporting requirements, performance standards or other compliance obligations, although, as discussed above, it may modify, as necessary, certain existing reporting forms should it adopt any changes to its media ownership rules. Should the Commission ultimately adopt changes to its media ownership rules that could increase requirements or compliance burdens for small entities, it will determine whether possible exemptions, waiver opportunities, extended compliance deadlines or other measures would mitigate any potential impact on small entities.

106. *Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules.* None.

Ordering Clauses

107. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996, this Notice of Proposed Rulemaking is adopted.

108. It is further ordered, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on the *NPRM* in MB Docket No. 18–349 on or before sixty (60) days after publication in the **Federal Register** and reply comments on or before ninety (90) days after publication in the **Federal Register**.

109. It is furthered ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–03278 Filed 2–27–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 19–18; RM–11823; DA 19–44]

Television Broadcasting Services Gadsden and Hoover, Alabama

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of ION Media License Company, LLC. (ION), licensee of television station WPXH-TV, channel 45, Gadsden, Alabama (WPXH), the Commission is proposing to amend the DTV Table of Allotments by changing WPXH's community of license from Gadsden to Hoover, Alabama. ION asserts that the proposed reallotment is consistent with the Commission's second allotment priority by providing Hoover with its first local transmission service. ION also asserts that the proposed reallotment will not deprive Gadsden of its sole broadcast station because it will continue to be served by station WPXH-TV, licensed to Trinity Christian Center of Santa Ana, Inc. on channel 26 at Gadsden.

DATES: Comments must be filed on or before March 15, 2019 and reply comments on or before March 25, 2019.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: ION Media License Company, LLC, c/o Terri McGalliard, 601 Clearwater Park Road, West Palm Beach, Florida 33401.

FOR FURTHER INFORMATION CONTACT: Darren Fernandez, Media Bureau, at *Darren.Fernandez@fcc.gov;* or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 19–18; RM–11823; DA 19–43, adopted February 5, 2019, and released February 5, 2019. In addition to the proposed reallotment, ION requests waivers of § 73.625(a)(1) of the Commission's rules, 47 CFR 73.625(a)(1) and the Commission's freeze on the filing of

petitions for digital channel substitutions. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW, Washington, DC, 20554, or online at *http://apps.fcc.gov/ecfs/*. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73 Television.

Federal Communications Commission.

Barbara Kreisman

Chief, Video Division, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alabama, is amended by removing Gadsden, channel 45, and adding, in alphabetical order, Hoover, channel 45.

[FR Doc. 2019–03548 Filed 2–27–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2019–0009]

RIN 2127–AM10

Federal Motor Vehicle Safety Standards; Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 305, ''Electric-powered vehicles: Electrolyte spillage and electrical shock protection,'' to clarify the direct contact protection requirements that apply to high voltage connectors, and to explicitly permit the use of high voltage connectors that cannot be separated without the use of tools. The proposed changes to these requirements would harmonize FMVSS No. 305 with Global Technical Regulations (GTRs) No. 13 and No. 20, which explicitly permit such connectors. In addition, it would make three minor technical corrections to the standard.

DATES: Comments must be received on or before March 15, 2019.

ADDRESSES: You may submit comments identified by the docket number in the heading of this document or by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Mail:* Docket Management Facility. M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal Holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit comments, you must include the docket number identified in the heading of this notice.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Shashi Kuppa, Office of Crashworthiness Standards; telephone: 202–366–3827; facsimile: 202–493–2990. For legal issues, you may contact Mr. Daniel Koblenz, Office of Chief Counsel; telephone: 202–366–2992; facsimile: 202–366–3820. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Proposal
IV. Technical Corrections
V. Effective Date and Comment Period
VI. Rulemaking Analyses and Notices
VII. Public Participation

I. Introduction

This document proposes to amend FMVSS No. 305, paragraph S5.4.1.5, to

clarify that the three compliance options listed in S5.4.1.5(a), (b) and (c) only pertain to connectors that can be separated without the use of a tool. This proposal would make clear that S5.4.1.5(a), (b) and (c) do not apply to high voltage connectors that require the use of a tool to separate from their mating component and that meet S5.4.1.4's IPXXD or IPXXB requirements [1] when the connector is connected to its mating component. NHTSA believes that connectors that require the use of a tool to separate from their mating component provide a level of direct contact protection that is equivalent to that provided by connectors already allowed under the standard. NHTSA believes that this proposed amendment will provide additional design flexibility to manufacturers of electric and fuel cell vehicles, thus facilitating the manufacture of such vehicles.

The changes proposed in this document would amend regulatory requirements that were established in the agency's September 27, 2017 final rule (82 FR 44945), which added several new requirements to improve electric vehicle safety. The final rule also sought to harmonize FMVSS No. 305 with the electrical safety requirements of GTR No. 13, ''Hydrogen and fuel cell vehicles,'' and a then-pending GTR No. 20, ''Electric vehicle safety.'' [2] (NHTSA voted in favor of establishing GTR No. 20 in March 2018.) This NPRM proposes to better harmonize FMVSS No. 305 with GTRs No. 13 and No. 20, which allow for the use of connectors that require the use of a tool to separate. NHTSA seeks to issue a final rule based on today's NPRM as soon as possible, in light of the September 27, 2017 final rule's compliance date of September 27, 2018.

II. Background

FMVSS No. 305 establishes requirements to reduce deaths and injuries during and after a crash that occur because of electrolyte spillage from electric energy storage devices, intrusion of electric energy storage/conversion devices into the occupant compartment, and electric shock. On September 27, 2017, NHTSA published a final rule amending FMVSS No. 305 by, among other things, adopting several electrical safety requirements found in GTR No. 13 (and later, GTR No. 20). 82 FR 44945. The GTR provisions adopted in the final rule included general requirements for protecting humans against direct contact with high-voltage live parts (FMVSS No. 305, S5.4.1.4), as well as specific direct contact protection requirements for high-voltage connectors (FMVSS No. 305, S5.4.1.5).[3] (The reason for specialized direct contact protection requirements for high voltage connectors is that, unlike other high voltage equipment, connectors are designed to separate from a mating component, which could potentially expose high voltage conductive parts to human contact.)

S5.4.1.4 requires that all high voltage sources, including high-voltage connectors, meet protection degree IPXXD or IPXXB (as appropriate) during normal vehicle operation. In addition, S5.4.1.5 requires that high voltage connectors must meet at least one of the following three compliance options to provide protection when separated: (a) The connector meets protection degree IPXXD/IPXXB when separated from its mating component, if the connector can be separated without the use of tools; (b) the voltage of the live parts becomes less than or equal to 60 volts of direct current (VDC) or 30 volts of alternating current expressed using the root mean square value (VAC) within one second after the connector is separated from its mating component; or (c) the connector is provided with a locking mechanism [4] and there are other components that must be removed in order to separate the connector from its mating component and these other components cannot be removed without the use of tools.

NHTSA had intended for these provisions to harmonize the direct contact requirements for high voltage connectors in FMVSS No. 305 with those in GTRs No. 13 and No. 20 (which explicitly permit the use of connectors that require the use of a tool to separate).[5] [6] However, following its issuance of the final rule, the agency received petitions for reconsideration from the Alliance of Automobile Manufacturers and Global Automakers, which argued in part that the regulatory text adopted in the final rule did not appear to permit use of connectors that require the use of a tool to separate. For this reason, the petitions requested that NHTSA amend S5.4.1.5 to provide a compliance option for high voltage connectors that meet IPXXD/IPXXB protection degree when connected, and that require the use of a tool to separate.

NHTSA agrees with the petitioners that, although the agency had intended to permit connectors that require the use of a tool to separate, that intent is not clear in the current regulatory text. In addition, NHTSA believes that the current wording of S5.4.1.5 does not make clear whether the provision would permit a connector that requires the use of a tool to separate when the connector does not have the ''other components'' mentioned in S5.4.1.5(c). The absence of a compliance option that allows high voltage connectors that require the use of a tool to separate burdens vehicle manufacturers because it is a common method of providing direct contact protection for connectors. NHTSA proposes to amend S5.4.1.5 to make clear that connectors that require the use of a tool to separate are permitted.

The agency notes that, although these issues are within the scope of the September 27, 2017 final rule and could have been addressed in a response to the petitions for reconsideration, the agency would like to seek public comment on its proposed changes to the regulatory text. NHTSA believes public comments would be beneficial in ensuring that the changes proposed achieve their intended purpose of harmonizing FMVSS No. 305 with GTRs No. 13 and No. 20.

III. Proposal

NHTSA proposes to amend S5.4.1.5 to clarify that connectors are only required to meet one of the three listed compliance options if the connector can be separated without the use of a tool. NHTSA believes this change will harmonize that provision in FMVSS No. 305 with GTRs No. 13 and No. 20, as the

[1] *Protection degree IPXXD* is protection from contact with high voltage live parts. It is tested by probing electrical protection barriers with the test wire probe, IPXXD, shown in Figure 7a of FMVSS No. 305. *Protection degree IPXXB* is protection from contact with high voltage live parts. It is tested by probing electrical protection barriers with the jointed test finger probe, IPXXB, shown in Figure 7b of FMVSS No. 305.

[2] GTRs are model standards that are developed through collaboration between contracting parties to the 1998 Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles (the ''1998 Agreement''). As a contracting party to the 1998 Agreement, the United States, through NHTSA, worked closely with experts from other contracting parties to develop GTR No. 13 and GTR No. 20.

[3] FMVSS No. 305 defines a ''connector'' as ''a device providing a mechanical connection and disconnection of high voltage electrical conductors to a suitable mating component, including its housing.''

[4] A locking mechanism requires at least two distinct actions to separate the connector from its mating component and is intended to prevent inadvertent disconnection of the connector from its mating component.

[5] See September 27, 2017 final rule (82 FR at 44953) (Stating that the direct contact requirements for connectors ''are harmonized with GTR No. 13, ECE R100, and the draft EVS–GTR for electric vehicles.'').

[6] See GTR No. 13, 5.3.1.2.2, Protection against direct contact. *https://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29wgs/wp29gen/wp29registry/ECE-TRANS-180a13e.pdf.*

agency had intended in its September 27, 2017 final rule. Moreover, NHTSA believes that this change will provide additional design flexibility to manufacturers of electric vehicles and fuel cell vehicles without compromising safety.

This change will harmonize FMVSS No. 305 with GTRs No. 13 and No. 20 because it will clarify that high voltage connectors that require the use of a tool to separate meet requirements for direct contact protection. As noted above, NHTSA had intended to provide the same level of direct contact protection as GTRs No. 13 and No. 20, which explicitly permit such connectors. Because FMVSS No. 305 currently does not appear to permit high voltage connectors that require the use of a tool to separate, adopting the proposed changes would bring FMVSS No. 305 in line with GTRs No. 13 and No. 20.

The proposed change will not affect electric vehicle safety because a connector that requires the use of a tool to separate will not inadvertently separate due to vehicle jostling or human error. Thus, it eliminates the possibility that a person is inadvertently exposed to a risk of electric shock. NHTSA notes that connectors requiring the use of a tool to separate provide essentially the same level of electrical shock protection as connectors that are currently permitted under provision (c) of S5.4.1.5. That provision currently permits connectors that cannot be accessed without removing surrounding components that themselves require the use of a tool to remove. Connectors under S5.4.1.5(c) provide the same level of protection as connectors that require the use of a tool to separate because both cannot be separated without a person intentionally using a tool to accomplish connector separation, which effectively eliminates the risk of accidental shock. Thus, NHTSA believes that requiring a connector that cannot be separated without the use of a tool to also meet one of the three existing compliance options in S5.4.1.5 is unwarranted.

IV. Technical Corrections

NHTSA is also proposing to make several technical corrections to the language of FMVSS No. 305, which are described below.

Definition of ''High Voltage Live Part''

NHTSA is proposing to add a definition for the term ''high voltage live part'' to the definitions section of FMVSS No. 305. The term would be defined as ''a live part of a high voltage source.'' NHTSA had intended to add this definition as part of the September 27, 2017 final rule, as indicated by the agency's statement that it will ''adopt terms such as 'high voltage live parts' . . . in place of proposed terms that were less clear.'' 82 FR at 44948. In addition, the agency stated in Table 1 of the final rule that adding the term ''high voltage live parts'' to S4 will clarify the requirements of the final rule, such as the applicability of IPXXD protection requirements. The agency will add this missing definition as a technical correction.

Cross-Reference

NHTSA is proposing to amend the cross-reference to the electrical isolation monitoring system requirement in S8 so that it is consistent with the reorganization of the FMVSS No. 305 that was done as part of the September 27, 2017 final rule. The final rule redesignated the electrical isolation monitoring system requirement from ''S5.4'' to ''S5.4.4,'' but did not make a conforming change to S8, which still refers to ''S5.4.'' The agency will change the S8 cross-reference to ''S5.4.4'' as a technical correction.

Corrected Term

NHTSA is proposing to correct the use of incorrect terminology in the description of the requirements for a resistance tester in S9.2(a). Currently, that provision states that ''resistance is measured using a resistance tester that can *measure* current levels of at least 0.2 Amperes.'' (Emphasis added.) The term ''measure'' should be ''supply.''[7] Accordingly, the agency will replace ''measure'' with ''supply'' in S9.2(a) as a technical correction.

V. Effective Date and Comment Period

NHTSA proposes that the final rule that follows this NPRM will have an immediate effective date upon publication of the final rule in the **Federal Register**.

The Safety Act states that an amendment to a safety standard may not take effect earlier than 180 days after the standard is prescribed, or later than one year after the standard is prescribed unless, for good cause shown, a different effective date would be in the public interest. 49 U.S.C. 30111(d). NHTSA has tentatively concluded that good cause exists for this rule to become effective immediately, because the rule would not impose new substantive requirements that would burden vehicle manufacturers, and in fact would relieve an existing restriction. Similarly, the Administrative Procedure Act (APA) states that a rule cannot be made effective less than 30 days after publication, unless the rule falls under one of three enumerated exceptions. One of these exceptions is for a rule that ''grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). This rule would fall under this exception because it would relieve the existing restriction that prohibits the use of high voltage connectors that cannot be separated without the use of tools. NHTSA seeks comment on its tentative conclusion that good cause exists to justify an immediate effective date for a final rule based on this proposal.

DOT Order 2100.5 requires that NHTSA provide a public comment period of at least 45 days for non-significant regulations, but may provide a shorter comment period if the proposed regulation is accompanied by a brief statement of reasons. NHTSA is providing a shortened 15-day comment period principally for two reasons. First, the September 27, 2017 final rule's effective date was September 27, 2018. The proposed amendments provide flexibility to manufacturers in meeting the final rule's requirements, so NHTSA would like to issue a final rule based on this NPRM as soon as possible. Second, the proposed changes are merely corrective and clarifying in nature, and a review of them by the public can be done quickly.

VI. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

We have considered the potential impact of this proposed rule under Executive Order (E.O.) 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures and have determined that today's proposed rule is nonsignificant. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures. The amendments proposed by this NPRM mostly clarify or correct text adopted by a September 27, 2017 final rule and will have no significant effect on the national economy. This NPRM would clarify the direct contact protection requirements that apply to high voltage connectors, and to explicitly permit the use of high voltage connectors that cannot be separated without the use of tools.

[7] A resistance tester does not ''measure'' current in a circuit; it supplies current to a circuit which allows the tester to measure that circuit's level of electrical resistance.

As noted above, NHTSA is providing a 15-day comment period for two principal reasons. First, the September 27, 2017 final rule's effective date is September 27, 2018. The proposed amendments provide flexibility to manufacturers in meeting the final rule's requirements, so NHTSA would like to issue a final rule based on this NPRM as soon as possible. Second, the proposed changes are merely corrective and clarifying in nature, and a review of them by the public can be done quickly.

Executive Order 13771

This proposed rule is E.O. 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of E.O. 12866, ''Regulatory Planning and Review,'' are subject to these requirements. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of E.O. 13609 provides that unnecessary differences in regulatory approaches between U.S. agencies and their foreign counterparts can negatively affect the international competitiveness of U.S. businesses. Accordingly, U.S. agencies should, where possible, engage with these foreign counterparts to identify regulatory approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation.

This rulemaking harmonizes FMVSS No. 305 with provisions that are in GTRs No. 13 and No. 20. Specifically, the primary clarification proposed by this document—that the use of connectors that cannot be separated without the use of tools is permissible under FMVSS No. 305—will bring FMVSS No. 305 into alignment with GTRs No. 13 and No. 20 requirements relating to high voltage connectors, and so will further the goals of E.O. 13609.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)(1)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The amendments proposed by this NPRM mostly clarify or correct text adopted by a September 27, 2017 final rule. This proposed rule would make clear that connectors that cannot be separated without the use of a tool are permitted under FMVSS No. 305 without having to have present ''other components'' needing a tool to separate.

This action would not impose any additional restrictions that would affect small entities, and in fact, would give greater design flexibility to manufacturers of electric vehicles and HFCVs.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. Today's proposed rule would 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.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that, if NHTSA has established a standard for an aspect motor vehicle or motor vehicle equipment performance a State may only prescribe or continue in effect a standard for that same aspect of performance if the State standard is identical to the Federal standard. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposed rule and

finds that this proposed rule, like many NHTSA rules, prescribes only a minimum safety standard. Accordingly, NHTSA does not intend that this proposed rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposal. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard proposed in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, E.O. 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

E.O. 13045, ''Protection of Children from Environmental Health and Safety Risks,'' (62 FR 19885; April 23, 1997) applies to any proposed or final rule that: (1) Is determined to be ''economically significant,'' as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the agency must evaluate the environmental health or safety effects of the rule on children, and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This proposed rule is not subject to E.O. 13045 because it is not economically significant.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

Pursuant to the above requirements, the agency conducted a review of voluntary consensus standards to determine if any were applicable to this proposed rule. NHTSA searched for but did not find voluntary consensus standards directly applicable to the amendments proposed in this NPRM.

However, consistent with the NTTAA, this proposal is aligned with regulations developed globally on electric vehicle safety, namely GTR No. 13 and GTR No. 20.[8] The GTRs permit the use of high voltage connectors that cannot be separated without the use of tools. We believe that the proposed amendment to FMVSS No. 305 would promote harmonization of our countries' regulatory approaches on electric vehicles and HFCVs.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). We note that as this proposed rule only makes minor adjustments and clarifications to FMVSS No. 305. Thus, it would not result in expenditures by any of the aforementioned entities of over $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule imposes no new reporting requirements on manufacturers.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VII. Public Participation

How do I prepare and submit comments?

- To ensure that your comments are correctly filed in the Docket, please include the Docket Number found in the heading of this document in your comments.
- Your comments must not be more than 15 pages long.[9] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.
- Please note that pursuant to the Data Quality Act, in order for substantive data to be relied on and used by NHTSA, it must meet the

[8] The NTTAA seeks to support efforts by the Federal government to ensure that agencies work with their regulatory counterparts in other countries to address common safety issues. Circular No. A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' January 27, 2016, p. 15.

[9] 49 CFR 553.21.

information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, NHTSA encourages you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at *https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines.*

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions you make and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- To ensure that your comments are considered by the agency, make sure to submit them by the comment period deadline identified in the **DATES** section above.

For additional guidance on submitting effective comments, visit: *https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See *www.regulations.gov* for more information.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95 and 501.8.

■ 2. Amend § 571.305 by:

■ a. Adding, in alphabetical order, a definition for ''High voltage live part'' to paragraph S4;

■ b. Revising paragraph S5.4.1.5;

■ c. Revising the introductory text of paragraph S8; and

■ d. Revising paragraph S9.2(a).

The addition and revisions read as follows:

§ 571.305 Standard No. 305; Electric-powered vehicles; electrolyte spillage and electrical shock protection.

* * * * *

S4. Definitions.

* * * * *

High voltage live part means a live part of a high voltage source.

* * * * *

S5.4.1.5 *Connectors.* All connectors shall provide direct contact protection by:

(a) Meeting the requirements specified in S5.4.1.4 when the connector is connected to its corresponding mating component; and,

(b) If a connector can be separated from its mating component without the use of a tool, meeting at least one of the following conditions (1), (2), or (3):

(1) The connector meets the requirements of S5.4.1.4 when separated from its mating component;

(2) The voltage of the live parts becomes less than or equal to 60 VDC or 30 VAC within one second after the connector is separated from its mating component; or,

(3) The connector requires at least two distinct actions to separate from its mating component and there are other components that must be removed in order to separate the connector from its mating component and these other components cannot be removed without the use of tools.

* * * * *

S8. *Test procedure for on-board electrical isolation monitoring system.* Prior to any impact test, the requirements of S5.4.4 for the on-board electrical isolation monitoring system shall be tested using the following procedure.

* * * * *

S9.2 * * *

(a) *Test method using a resistance tester.* The resistance tester is connected to the measuring points (the electrical chassis and any exposed conductive part of electrical protection barriers or any two simultaneously reachable exposed conductive parts of electrical protection barriers that are less than 2.5 meters from each other), and the resistance is measured using a resistance tester that can supply current levels of at least 0.2 Amperes with a resolution of 0.01 ohms or less. The resistance between two exposed conductive parts of electrical protection barriers that are less than 2.5 meters from each other may be calculated using the separately measured resistances of the relevant parts of the electric path.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–03181 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 84, No. 40
Thursday, February 28, 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

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of the 2019 Organic Survey. Response to this survey will be mandatory.

DATES: Comments on this notice must be received by April 29, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0249, 2019 Organic Survey, by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Organic Survey.

OMB Control Number: 0535–0249.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. In 2015, NASS conducted the 2014 Organic Production Survey (OMB #0535–0249). Originally, the Organic Survey was designed to be conducted once every five years as a mandatory, follow-on-survey to the 2007 Census of Agriculture and then every five years after that. In 2011, the docket was renewed, and the survey was changed to accommodate a cooperative agreement between NASS and the USDA Risk Management Agency (RMA). Specifically, the survey was changed to a voluntary survey that was to be conducted annually if funding permitted, and it would allow for a rotation of target crops each year. With the completion of the 2012 Census of Agriculture, NASS renewed the Organic Survey again and returned it to its' original scope of questions and the mandatory reporting requirement. After the completion of the 2014 Organic Survey, NASS renewed its' cooperative agreement with RMA to conduct the shorter questionnaire on an annual basis. Following the 2017 Census of Agriculture, NASS is requesting to reinstate this survey as a follow-on survey with mandatory reporting.

The sample will consist of all certified organic operations, operations exempt from organic certification (value of sales <$5,000), and operations with acres transitioning into organic certification from the 2017 Census of Agriculture as well as organic operations currently on the NASS list frame. The survey will be conducted in all States. Some operation level data will be collected to use in classifying each operation for summary purposes. The majority of the questions will involve production data (acres planted, acres harvested, quantity harvested, quantity sold, livestock produced and sold, value of sale, etc.), and marketing and production practices. In the 2019 questionnaire, NASS is planning to remove the ''GMO Presence in Organic Crops'' and the ''Production Expenses'' sections that were included in the 2014 questionnaire.

Approximately 20,000 operations will be contacted by mail in early January 2020, with a second mailing later in the month to non-respondents. Respondents will be able to complete the questionnaire by use of the internet, if they so choose. Telephone and personal enumeration will be used for remaining non-response follow-up. The National Agricultural Statistics Service will publish summaries in December 2020 at both the State level and for each major organic commodity when possible. Due to confidentiality rules, some State level data may be combined and published at the regional or national level to prevent disclosure of individual operation's data.

This collection of data will support requirements within the Agricultural Act of 2014.

Under Section 11023 some of the duties of the Federal Crop Insurance Corporation (FCIC) are defined as ''(i) IN GENERAL—As soon as possible, but not later than the 2015 reinsurance year, the Corporation shall offer producers of organic crops price elections for all organic crops produced in compliance with standards issued by the Department of Agriculture under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) that reflect the actual retail or wholesale prices, as appropriate, received by producers for organic crops, as determined by the Secretary using all relevant sources of information. ''(ii) ANNUAL REPORT.—The Corporation shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report on progress made in developing and improving Federal crop insurance for organic crops, including—''(I) the numbers and varieties of organic crops insured; ''(II) the progress of implementing the price elections required under this subparagraph, including the rate at which additional price elections are adopted for organic crops; ''(III) the development of new insurance

approaches relevant to organic producers; and ''(IV) any recommendations the Corporation considers appropriate to improve Federal crop insurance coverage for organic crops''.

Authority: This census of organic farmers is required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g) as amended. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response.

Respondents: Farmers and Ranchers.

Estimated Number of Respondents: 20,000.

Estimated Total Annual Burden on Respondents: 16,000 hours (based on an estimated 80% response rate, using 2 mail attempts, followed by phone and personal enumeration for non-respondents).

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 13, 2019.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2019–03498 Filed 2–27–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Horticultural Specialties. Response to this survey will be mandatory.

DATES: Comments on this notice must be received by April 29, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0236, 2019 Census of Horticultural Specialties, by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 2019 Census of Horticultural Specialties.

OMB Control Number: 0535–0236.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for the 2019 Census of Horticultural Specialties survey to be conducted as a follow-on survey from the 2017 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title X—Horticulture and Organic Agriculture) as amended.

The 2019 Census of Horticultural Specialties will use as a sampling universe; every respondent on the 2017 Census of Agriculture who reported production and sales of $10,000 or more of horticultural specialty crops, and is still in business in 2019. In addition, NASS also plans to contact all new operations that have begun producing horticultural specialty products since the completion of the 2017 Census of Agriculture. Data collection will begin around January 1, 2020 for production and sales data for 2019. A final report will be published around December 2020. Data will be published at both the US and State levels where possible.

Authority: The census of horticulture is required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g) as amended. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, *i.e.,* soil conservation projects, funds for

cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution decisions for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Producers of horticultural specialty crops.

Estimated Number of Respondents: 41,000.

Estimated Total Annual Burden on Respondents: 52,000 hours. NASS plans to send out a pre-survey postcard informing the public of the upcoming survey. Along with the mail out of the questionnaires, NASS will include a cover letter with a short explanation of the need for this survey and the potential uses of the published data by data users. NASS will also provide respondents with an instruction sheet and directions on how to access the internet and complete the questionnaire on line. Operators who do not respond by mail or internet will be attempted by either phone or personal interview.

The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture and it's follow on surveys.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 12, 2019.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2019–03499 Filed 2–27–19; 8:45 am]

BILLING CODE 3410–20–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission telephonic business meeting.

DATES: Thursday, March 7, 2019 at 10:00 a.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371, *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only. Participant Access Instructions: Listen Only for Public: (800) 682–9934; Conference ID: 552–5076. Please dial in 5–10 minutes prior to the start time.

Meeting Agenda

I. Approval of Agenda
II. Program Planning
  Discussion and Vote on Report: Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities
III. Adjourn Meeting

Dated: February 26, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019–03707 Filed 2–26–19; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request; Procedures for Submitting Request for Exclusions From the Section 232 National Security Adjustments of Imports of Steel and Aluminum

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Procedures for Submitting Request for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum.

Form Number(s): 0694–0139.

OMB Control Number: 0694–0139.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 387,816.

Estimated Number of Respondents: 96,954.

Estimated Time per Response: 4 hours.

Needs and Uses: This collection of information supports Presidential Proclamations 9705 *Adjusting Imports of Steel Mill Articles into the United States* and 9704 *Adjusting Imports of Aluminum into the United States.*

On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the two reports and determining that adjusting imports through the imposition of duties on steel and aluminum is necessary so that imports of steel and aluminum will no longer threaten to impair the national security.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov, http://www.reginfo.gov/public/.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–03508 Filed 2–27–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–079]

Cast Iron Soil Pipe From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that cast iron soil pipe from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2017, through December 31, 2017.

DATES: Applicable February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* in the LTFV investigation of cast iron soil pipe from China.[1] The sole participating mandatory respondent in this investigation is Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd. (HengTong). Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018, through the resumption of operations on January 29, 2019. The revised deadline for the final determination of this investigation is now February 22, 2019.[2]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by interested parties for this final determination, may be found in the Issues and Decision Memorandum issued concurrently with this notice.[3] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The products covered by this investigation is cast iron soil pipe from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice. Commerce issued a scope memorandum addressing interested parties' comments regarding scope issues presented in the case briefs and in subsequent scope comments with the *Preliminary Determination.*[4] Commerce's scope is unchanged from the *Preliminary Determination.* For further discussion, *see* Commerce's Scope Memorandum. The scope in Appendix I reflects the final scope language.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

China-Wide Entity and Use of Adverse Facts Available

As stated in the *Preliminary Determination,* Sibo International Limited (Sibo) was selected as a mandatory respondent and, accordingly, we issued it our antidumping duty questionnaire.[5] However, Sibo never responded to our request for information. Therefore, we found that Sibo failed to demonstrate its eligibility for a separate rate, and, as a result, considered it to be part of the China-wide entity.[6] For the reasons explained in the *Preliminary Determination,* we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity, which includes Sibo, and other uncooperative respondents.

China-Wide Rate

In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[7] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.[8] For the final determination, we assigned the China-wide entity, as AFA, a dumping margin of 235.93 percent. Because this rate was a calculated rate, based on a mandatory respondent's data in this segment of the proceeding, it does not constitute secondary information and, therefore, there is no need to corroborate it.

Separate Rates

For the final determination, we continue to find that HengTong is eligible for a separate rate, as noted below. Section 735(c)(5)(A) of Tariff Act of 1930, as amended (the Act) provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero or *de minimis* margins, and any margins determined entirely under section 776 of Act. In this proceeding, Commerce calculated an above-*de minimis* rate that is not based entirely on facts available for the only responding mandatory respondent under individual examination, *i.e.,* HengTong. Thus, consistent with our practice, we are assigning the sole mandatory respondent's rate as the rate for non-individually examined companies that have qualified for a

[1] *See Cast Iron Soil Pipe From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 44567 (August 31, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum for The Record from Gary Taverman, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government'' (Tolling Memorandum), dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Commerce Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Commerce Memorandum, ''Cast Iron Soil Pipe From People's Republic of China: Preliminary Scope Comment Decision Memorandum,'' dated August 24, 2018 (Scope Memorandum).

[5] *See* Preliminary Decision Memorandum at 2.

[6] *Id.*at 11.

[7] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), *unchanged* in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[8] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

separate rate.[9] This long-standing practice is also Court-affirmed.[10]

Combination Rates

In the *Initiation Notice,*[11] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Accordingly, we have assigned combination rates to certain companies, as provided in the ''Final Determination'' section below.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties and our findings at verification, we made certain changes to the calculation of the antidumping duty margin applicable to HengTong. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that cast iron soil pipe from China are being, or are likely to be, sold in the United States at LTFV, and that the following dumping margins exist:

Producer	Exporter	Weighted-average dumping margin (percent)
Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd.	Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd.	235.93
Wu'An Yongtian Casting Co., Ltd	Dalian Lino F.T.Z. Co., Ltd	235.93
Yangcheng County Huawang Universal Spun Cast Pipe Foundry.	Dalian Lino F.T.Z. Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Dalian Metal I/E Co., Ltd	235.93
Wu'an Yongtian Casting Co., Ltd	Dalian Metal I/E Co., Ltd	235.93
Zezhou Golden Autumn Foundry Co., Ltd	Dalian Metal I/E Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	235.93
Wu'an Kerui xin Machinery Manufacturing Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	235.93
Wu'an Yongtian Casting Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	235.93
Wuan City Feixiang Metal Product Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	235.93
DingXiang County YuTai Casting-Forging Co., Ltd	Hebei Metals & Engineering Products Trading Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Hebei Metals & Engineering Products Trading Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Kingway Pipe Co., Ltd	235.93
Zezhou Golden Autumn Foundry Co., Ltd	Kingway Pipe Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Qinshui Shunshida Casting Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Shanxi Chen Xin Da Castings & Forgings Co., Ltd	235.93
Shanxi Xuanshi Industrial Group Co., Ltd	Shanxi Xuanshi Industrial Group Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Shanxi Zhongrui Tianyue Trading Co., Ltd	235.93
Qinshui Shunshida Casting Co., Ltd	Terrifour (Dalian) Trading Co., Ltd	235.93
Shanxi Chengda Special Forging Co., Ltd	Terrifour (Dalian) Trading Co., Ltd	235.93
Wuan City Feixiang Metal Product Co., Ltd	Wuan City Feixiang Metal Product Co., Ltd	235.93
Zezhou Golden Autumn Foundry Co., Ltd	Zezhou Golden Autumn Foundry Co., Ltd	235.93
CHINA-WIDE ENTITY		235.93

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of cast iron soil pipe from China, as described in the ''Scope of the Investigation'' section, exported by HengTong, entered or withdrawn from warehouse, for consumption on or after August 31, 2018, the date of publication of the *Preliminary Determination* notice in the **Federal Register**.

To determine the cash deposit rate, Commerce normally adjusts the

[9] *See, e.g., Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 42314, 42316 (June 29, 2016) (''Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, {Commerce} has calculated a rate for TTI that is not zero, *de minimis,* or based entirely on facts available. Therefore, {Commerce} has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI.''); *Certain Corrosion Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316, 35317 (June 2, 2016) (''In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis,* or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies.''); *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 60627, 60627 (October 7, 2015) *unchanged* in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 22578 (April 18, 2016).

[10] *See, e.g., Changzhou Wujin Fine Chemical Factory Co., Ltd.,* v. *United States,* 942 F. Supp. 2d 1333, 1339 (CIT 2013); *Longkou Haimeng Mach. Co.* v. *United States,* 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's decision to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively).

[11] *See Cast Iron Soil Pipe from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 8053 (February 23, 2018) (*Initiation Notice*).

estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have not made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies. Therefore, we are not adjusting the estimated weighted-average dumping margin for these subsidies.

In addition, pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of the merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. As Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cast iron soil pipe from China, or sales (or the likelihood of sales) for importation, of cast iron soil pipe from China. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce intends to issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 22, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of this investigation includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. China-Wide Rate
IV. Separate Rates
V. Scope Comments
VI. Adjustments for Countervailable Export Subsidies
VII. Changes Since the Preliminary Determination
VIII. Discussion of the Issues
Comment 1: Incorporation of Minor Corrections
Comment 2: Surrogate Value for Pig Iron
Comment 3: Surrogate Value for Plastic Strips
Comment 4: Surrogate Value for Plywood Boards
Comment 5: Ocean Freight Adjustment
Comment 6: Surrogate Value for Asphalt Paint
Comment 7: Aberrational Surrogate Values
Comment 8: Non-Refundable Value-Added Tax (VAT)
IX. Recommendation

[FR Doc. 2019–03531 Filed 2–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–080]

Cast Iron Soil Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of cast iron soil pipe (soil pipe) from the People's Republic of China (China). The period of investigation is January 1, 2017, through December 31, 2017.

DATES: Applicable February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi or Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5307 or (202) 482–0250, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* on July 2, 2018.[1] In the *Preliminary Determination,* Commerce aligned the final CVD determination with the final determination in the companion antidumping duty investigation, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] A list of topics discussed in the Issues and Decision Memorandum is included as Appendix II to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decisions Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination is now February 22, 2019.

Scope of the Investigation

The products covered by this investigation is cast iron soil pipe from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice. Commerce issued a scope memorandum addressing interested parties' comments regarding scope issues presented in the case briefs and in subsequent scope comments with the *Preliminary Determination.*[4] Commerce's scope is unchanged from the *Preliminary Determination.* For further discussion, *see* Commerce's Scope Memorandum. The scope in Appendix I reflects the final scope language.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making these findings, Commerce relied, in part, on facts otherwise available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference where appropriate in selecting from among the facts otherwise available.[6] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from the interested parties, our findings at verification, and our post-preliminary analysis, we made certain changes to the respondents' subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(l)(B)(i)(I) of the Act, we calculated a rate for HengTong, a producer/exporter of subject merchandise selected for individual examination in this investigation. With regard to Kingway Pipe Co., Ltd. (Kingway), for the reasons described in the *Preliminary Determination,* Commerce assigned a rate based entirely on adverse facts available pursuant to section 776 of the Act. No interested party commented on our preliminary decision, and so for purposes of this final determination, we continue to assign Kingway a rate based entirely on AFA.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. HengTong is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the subsidy rate calculated for HengTong.

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Kingway Pipe Co., Ltd	109.27
Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd[7]	14.69
All-Others	14.69

Disclosure

We intend to disclose the calculations performed to parties in this proceeding, for this final determination, within five days of the date of publication of our final determination, in accordance with 19 CFR 351.224(b).

[1] *See Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 30914 (July 2, 2018) (*Preliminary Determination*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Cast Iron Soil Pipe from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Commerce Memorandum, ''Cast Iron Soil Pipe from People's Republic of China: Preliminary Scope Comment Decision Memorandum,'' dated August 24, 2018 (Scope Memorandum).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* sections 776(a), (b), and 782(d) of the Act.

[7] Commerce initiated this proceeding on two respondents ''Jiangxian Economic Development Zone Heng (Jiangxian) and Kingway Pipe Co Ltd (Kingway)'' based on CBP data. We have accepted HengTong's request to reflect its name as ''Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd. (HengTong)'' which is the name we have used in this proceeding.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of any entries of merchandise under consideration from China that were entered, or withdrawn from warehouse, for consumption on or after July 2, 2018, which is the publication date in the **Federal Register** of the *Preliminary Determination.* In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after November 19, 2018, but to continue the suspension of liquidation of all entries from July 2, 2018, through November 18, 2018.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of countervailable subsidies are being provided to producers and exporters of soil pipe from China. Because Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of soil pipe from China no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 22, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of this investigation includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Subsidies Valuation
VI. Analysis of Programs
VII. Analysis of Comments
VIII. Recommendation

[FR Doc. 2019–03538 Filed 2–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Certification of Admissibility for Fishery Products.

OMB Control Number: 0648–0651.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 90 respondents annually filing 10 responses each.

Average Hours per Response: 0.17 hours (10 minutes).

Burden Hours: 150 hours annually.

Needs and Uses: This information is needed to confirm admissibility of certain seafood products when a nation is subject to trade restrictions imposed by the United States under the authority of the High Seas Driftnet Fishing Moratorium Protection Act or the Marine Mammal Protection Act.

Affected Public: Businesses or other for-profit organizations; foreign officials; Federal government.

Frequency: On each occasion of an export shipment of fish and fish products subject to the certification requirement.

Respondent's Obligation: The information is collected electronically at the time of entry filing in the Automated Commercial Environment (ACE) of U.S. Customs and Border Protection (CBP).

The exporter completes information on the contents/origin of the fish products contained in the export shipment and obtains export government certification that the fish meet the U.S. admissibility criteria. Entry filers (importers or customs brokers) obtain the completed Certification of Admissibility from the exporter (attached to the shipment packaging or via email or fax) and upload the image file of the document to ACE via the Document Image System. CBP will release the shipment only when certification has been received.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–03509 Filed 2–27–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to React Power, Inc.; New York, NY

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to React Power, Inc.; a corporation having its principle place of business at 175 East 96 Street, Apt. PHN, New York, NY 10029, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to U.S. Army Research Laboratory, Technology Transfer and Outreach Office, RDRL–DPT/Annmarie Martin, Building 321, Room 126, 6375 Johnson Rd., Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Annmarie Martin, (410) 278–9106, Email: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant an exclusive license to React Power, Inc. in the fields of use related to;

—Extraction and processing of subterranean hydrocarbons (such as crude oil and natural gas) relative to the following;

—''Aluminum based nanogalvanic compositions useful for generating hydrogen gas and low temperature processing thereof'', US Patent Application No.: 16/042632, Filing Date 23 July 2018.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–03525 Filed 2–27–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–HA–0099]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Health Affairs, DoD.

ACTION: 30-day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 1, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Statement of Personal Injury: Possible Third Party Liability; DD–2527; OMB Control Number 0720–0003.

Type of Request: Extension.

Number of Respondents: 188,090.

Responses per Respondent: 1.

Annual Responses: 188,090.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 47,022.50.

Needs and Uses: When a claim for TRICARE benefits is identified as involving possible third party liability and the information is not submitted with the claim the TRICARE contractors request that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate the information is forwarded to the Department of Justice as the basis for litigation.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to

Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 25, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03555 Filed 2–27–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense Board of Actuaries, 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 Department of Defense Board of Actuaries will take place.

DATES: Day 1—Open to the public Thursday, July 11, 2019, from 1:00 p.m. to 4:00 p.m. Day 2—Open to the public Friday, July 12, 2019, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: The address of the meeting is 4800 Mark Center Drive, Conference Room 14, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (Voice), inger.m.pettygrove.civ@mail.mil (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.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 purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive (VSI) Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 *et seq.*), and Section 1175 of Title 10, U.S.C.

Agenda:

Education Benefits Fund (July 11, 1:00 p.m.–4:00 p.m.)

1. Fund Overview
2. Briefing on Investment Experience
3. September 30, 2018, Valuation Proposed Economic Assumptions *
4. September 30, 2018, Valuation Proposed Methods and Assumptions—Reserve Programs *
5. September 30, 2018, Valuation Proposed Methods and Assumptions—Active Duty Programs *
6. Developments in Education Benefits

Military Retirement Fund/VSI Fund (July 12, 10:00 a.m.–1:00 p.m.)

1. Recent and Proposed Legislation
2. Briefing on Investment Experience
3. September 30, 2018, Valuation of the Military Retirement Fund *
4. Proposed Methods and Assumptions for September 30, 2019, Valuation of the Military Retirement Fund *
5. Proposed Methods and Assumptions for September 30, 2018, VSI Fund Valuation *

* Board approval required.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 14, 2019. Attendees should secure their meeting reservations before this deadline to avoid any issues with building access. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Written Statements: Persons desiring to attend the DoD Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Kathleen Ludwig at 571–372–1993, or *Kathleen.A.Ludwig.civ@mail.mil,* by June 14, 2019.

Dated: February 25, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03551 Filed 2–27–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, 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 Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries will take place.

DATES: Open to the public Friday, August 2, 2019, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The address of the open meeting is 4800 Mark Center Drive, Conference Room 13, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (Voice), *inger.m.pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.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 purpose of the meeting is to execute the provisions of 10 U.S.C. chapter 56 (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda

1. Meeting Objective.

a. Approve actuarial assumptions and methods needed for calculating:

(i) September 30, 2018 unfunded liability (UFL)

(ii) FY 2021 per capita full-time and part-time normal cost amounts

(iii) October 1, 2019, Treasury UFL amortization payment

b. Approve per capita full-time and part-time normal cost amounts for the October 1, 2019 (FY 2020) normal cost payments

2. Trust Fund Update—Investment Experience.

3. Medicare-Eligible Retiree Health Care Fund Update.

4. September 30, 2017, Actuarial Valuation Results.

5. September 30, 2018, Actuarial Valuation Proposals.

6. Decisions.

(i) Actuarial assumptions and methods needed for calculating items specified in agenda item 1.a

(ii) Per capita full-time and part-time normal cost amounts needed for calculating item specified in agenda item 1.b.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than July 8, 2019. Attendees should secure their meeting reservations before this deadline to avoid any issues with building access. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Written Statements: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Kathleen Ludwig at 571–372–1993, or *Kathleen.A.Ludwig.civ@mail.mil,* by July 8, 2019.

Dated: February 25, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03553 Filed 2–27–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0018]

Agency Information Collection Activities; Comment Request; Application for Client Assistance Program

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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 29, 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–2019–ICCD–0018. 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. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *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 April Trice, 202–245–6074.

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: Application for Client Assistance Program.

OMB Control Number: 1820–0520.

Type of Review: An extension of an existing information collection.

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

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This form is used by states to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act to assist consumers and applicants in their relationships with projects, programs and services provided under the Rehabilitation Act including the Vocational Rehabilitation and Supported Employment programs and the Independent Living Services for Older Individuals Who Are Blind program.

Dated: February 25, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–03491 Filed 2–27–19; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines

AGENCY: United States Election Assistance Commission.

ACTION: Notice of proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines request for public comment.

SUMMARY: In accordance with the Help America Vote Act of 2002, the U.S. Election Assistance Commission (EAC) is publishing the Voluntary Voting System Guidelines 2.0 Principles and Guidelines (VVSG2.0) for public comment. The VVSG 2.0 Principles and Guidelines provide high level principles and guidelines to which voting systems can be tested to determine if they provide basic functionality, accessibility, and security capabilities.

DATES: Comments must be received on or before 4:00 p.m. EST on May 29, 2019.

Submission of Comments: The public may submit comments through one of the two following methods provided by the EAC: (1) By mail to Voluntary Voting System Guidelines 2.0. Principles and Guidelines Comments, U.S. Election Assistance Commission, 1335 East-West Highway, Suite 4300, Silver Spring, Maryland 20910, and (2) via email at *votingsystemguidelines@eac.gov.* Members of the public are encouraged to submit comments electronically to ensure timely receipt and consideration.

In order to allow efficient and effective review of comments the EAC requests that:

(1) Comments refer to the specific section that is the subject of the comment.

(2) General comments regarding the entire document or comments that refer to more than one section be made as specifically as possible so that EAC can clearly understand to which portion(s) of the documents the comment refers.

(3) To the extent that a comment suggests a change in the wording of a Principal or Guideline or section of the guidelines, please provide proposed language for the suggested change.

To Obtain a Copy of the VVSG Volume Version 2.0 Principles and Guidelines: A complete copy of the draft VVSG 2.0 Principles and Guidelines is available from the EAC in electronic format. An electronic copy can be downloaded in PDF format on the EAC's website, *http://www.eac.gov.* In order to obtain a paper copy of the TGDC draft recommendations please mail a written request to Voluntary Voting System Guidelines 2.0 Principles and Guidelines Comments, U.S. Election Assistance Commission, 1335 East-West Highway, Suite 4300, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Macias, Phone (301) 563–3931, email *votingsystemguidelines@eac.gov.*

SUPPLEMENTARY INFORMATION: As required by Section 222(d) of HAVA the EAC is placing the proposed VVSG 2.0 Principles and Guidelines as submitted by the Technical Guidelines Development Committee (TGDC) out for a 90 public comment period. The EAC is asking for comments regarding all sections of the Principles and Guidelines including the proposed Structure of the VVSG 2.0. The Principles and Guidelines will subsequently be accompanied by Requirements, which will be distributed to the TGDC, the Standards Board, the Board of Advisors and submitted for public comment and consideration by the Commission.

The EAC made the decision to undertake the drafting of VVSG 2.0 Principles and Guidelines as a result of feedback received over several years from a variety of stakeholders including, but not limited to State and local election officials, voting system manufacturers and usability, accessibility and security interest groups.

The EAC Technical Guidelines Development Committee (TGDC) proposed a different structure for developing the VVSG 2.0 than in previous years. This structure differs significantly from previous versions of the VVSG because it is a high level principles and guidelines document. The Principles are high-level system design goals. The Guidelines are a broad description of the functions that make up a voting system. This new structure has significantly decreased the size and complexity of the VVSG from previous versions.

Unlike previous versions of the VVSG, this proposed version recommends that the Requirements for testing a voting system be separate and apart from the Principles and Guidelines. As proposed, the VVSG 2.0 Principles and Guidelines will be accompanied by a separate document that details the Requirements for how systems can meet the new Principles and Guidelines in order to obtain certification. The Requirements will subsequently be accompanied by Test Assertions for how the accredited test laboratories will validate that the system complies with the Requirements and the Principles and Guidelines.

The Requirements will be adjunct to the VVSG Principles and Guidelines itself and will be subject to public review and comment, including distribution to the EAC's TGDC, Standards Board and Board of Advisors for comment prior to consideration and implementation by the Commission.

The TGDC unanimously approved to recommend VVSG 2.0 Principles and Guidelines on September 12, 2017, and sent the Principles and Guidelines to the EAC Executive Director via the Director of the National Institute of Science and Technology (NIST), in the capacity of the Chair of the TGDC. The Commission will accept comments on the proposed structure of the VVSG 2.0 Principles and Guidelines as well as on the content of the Principles and Guidelines.

The Voluntary Voting System Guidelines version 2.0 Principles and Guidelines (VVSG 2.0), is the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSG on December 13, 2005. In an effort to update and improve version 1.0 of the VVSG, on March 31, 2015, the EAC commissioners unanimously approved VVSG 1.1.

Brenda J. Soder,

Director of Communications and Public Affairs, U.S. Election Assistance Commission.

[FR Doc. 2019–03453 Filed 2–27–19; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Quarterly Conference Call for EAC Board of Advisors.

DATES: Monday, March 4, 2019, 2:00–4:00 p.m. (EDT).

ADDRESSES: EAC Board of Advisers Quarterly Conference Call.

To listen and monitor the event as an attendee:

1. Go to: *https://eacevents.webex.com/eacevents/onstage/g.php?MTID=ecd5fd22ff87ff50c91e0babeeec7ca42.*

2. Click ''Join Now''.

To join the audio conference only:

1. To receive a call back, provide your phone number when you join the event, or

2. call the number below and enter the access code. US TOLL FREE: +1–855–892–3345, US TOLL: +1–415–527–5035, Access code: 905 314 545 (See toll-free dialing restrictions at *https://www.webex.com/pdf/tollfree_restrictions.pdf*).

For assistance: Contact the host, Mark Abbott at *mabbott@eac.gov.*

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Board of Advisors will conduct a conference call to discuss current EAC activities.

Agenda: The Board of Advisors (BOA) will receive updates from EAC staff and BOA officers regarding EAC activities; the 2019 BOA Conference; Remarks from new Commissioners; and BOA Committee/Sub-Committee Updates. The Board of Advisors will receive updates from the following BOA Committees: Resolutions; Voluntary

Voting System Guidelines (VVSG); By-Laws; and Strategic Planning. The Board of Advisors will discuss the next Quarterly BOA Conference Call. There will be no votes conducted on this call.

SUPPLEMENTARY INFORMATION: Members of the public may submit relevant written statements to the Board of Advisors with respect to the meeting no later than 10:00 a.m. EDT on Monday, March 4, 2019. Statements may be sent via email to *facaboards@eac.gov,* via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This conference call will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bert Benavides, Telephone: (301) 563–3937.

Brenda J. Soder,

Director of Communications and Public Affairs, U.S. Election Assistance Commission.

[FR Doc. 2019–03455 Filed 2–27–19; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13511–003]

Igiugig Village Council; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the Igiugig Village Council's application for a 10-year pilot project license for the proposed Igiugig Hydrokinetic Project No. 13511, which would be located on the Kvichak River in the Lake and Peninsula Borough, near the town of Igiugig, Alaska, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzed the potential environmental effects of constructing and operating the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the eFiling link. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support *FERCOnlineSupport@ferc.gov.* Although the Commission strongly encourages electronic filings, documents may also be paper-filed. To paper-file, mail an original copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 13511–003 to all comments.

For further information, contact Ryan Hansen by telephone at 202–502–8074 or by email at *ryan.hansen@ferc.gov.*

Dated: February 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03438 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2960–006]

City of Gonzales, Texas; Notice of Comment Period Extension

On January 10, 2019, the Commission issued a notice through the FERC eLibrary system [1] setting March 11, 2019, as the deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions in the relicensing of the Gonzales Project, and April 25, 2019, as the deadline for filing reply comments. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the deadlines by 15 days.

Dated: February 19, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03442 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9100–041]

James M. Knott; James M. Knott, Jr.; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On January 8, 2019, James M. Knott, Jr. (transferee) filed an application for an after-the-fact transfer of license of the Riverdale Mills Project No. 9100. The project is located on the Blackstone River in Worcester County, Massachusetts. The project does not occupy Federal lands.

The applicant seeks Commission approval to transfer the license for the Riverdale Mills Project from James M. Knott (transferor) to the transferee. James M. Knott passed away on August 16, 2018 and James M. Knott, Jr. has been operating the project since that time.

Applicant's Contacts: Mr. James M. Knott, Jr., CFO, 130 Riverdale Street, PO Box 920, Northbridge, MA 01534–0920, Phone: 508–847–2722, Email: *jknott@riverdale.com* and Mr. Kevin Young, President, 2112 Talmage Drive, Leland, NC 28541, Phone: 910–399–6838, Email: *KYoung@youngenergyservices.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866)

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14735647* and select the file link to view the document.

208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–9100–041.

Dated: February 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03443 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IS18–766–000; IS18–767–000]

Mid-America Pipeline Company, LLC; Seminole Pipeline Company LLC; Notice Rescheduling Technical Conference

The technical conference originally scheduled for January 17, 2019, in the above-referenced proceeding, is hereby rescheduled to convene on March 26, 2019, at 10:00 a.m. (Eastern Daylight Time). It will occur in Hearing Room 7 at the Commission's Washington, DC office.[1]

Dated: February 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03439 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–079]

Placer County Water Agency; Notice of Comment Period Extension

On January 10, 2019, the Commission issued a notice through the FERC eLibrary system[1] setting March 11, 2019, as the end of the formal period to file comments, motions to intervene, protests, recommendations, and terms and conditions on the amendment application for the Middle Fork American River Hydroelectric Project No. 2079. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 26, 2019.

Dated: February 19, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03440 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2897–048, 2932–047, 2941–043, 2931–042, 2942–051]

Sappi North America, Inc.; Notice of Comment Period Extension

On January 23, 2019, the Commission issued a notice through the FERC eLibrary system[1] setting February 22, 2019, as the end of the formal period to file comments on the Notice of Availability of Draft Environmental Assessment for the surrender of the Saccarappa Project (P–2897–048), and amendments to the licenses for the Mallison Falls, Little Falls, Gambo, and Dundee projects (P–2932–047, P–2941–043, P–2931–042, and P–2942–051), respectively. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 1, 2019.

Dated: February 14, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03441 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–091]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amended Shoreline Management Plan.

b. *Project No:* 2165–091.

c. *Date Filed:* December 20, 2018.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Hydroelectric Project.

f. *Location:* The Black Warrior River and Sipsey Fork in Cullman, Walker, Winston, and Tuscaloosa counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Laura Winston, Alabama Power Company, 600 18th Street North, Shoreline Management 12N–0791, Birmingham, Alabama 35203, (205) 257–4847.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 25, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2165–091. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by ordering paragraph (D) of the January 7, 2013 Order Modifying and Approving Shoreline Management Plan, Alabama Power Company (licensee) underwent a six-year review process (including stakeholder consultation) and as a result, requests Commission approval of an amended shoreline management plan (SMP) for the project. The licensee proposes minor changes to the approved SMP, as follows: (1) Removing the requirement for a shoreline

[1] See the *Notice of Technical Conference* issued on December 12, 2018, for additional details regarding this conference.

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14735810* and select the file link to view the document.

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14738486* and select the file link to view the document.

classification called Developed National Forest Service Lands; (2) expansion of the residential non-project use permitting process (*e.g.,* for closed-loop geothermal systems and dry hydrants); and (3) expanding the licensee's authority to permit existing reservoir crossings (*e.g.,* roads, bridges, utility lines, etc.).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03437 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–127]

PUD No. 1 of Chelan County; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2145–127.

c. *Date Filed:* February 7, 2019.

d. *Applicant:* PUD No. 1 of Chelan County.

e. *Name of Project:* Rocky Reach Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in Douglas and Chelan counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jeff Osborn, Compliance Program Manager, PUD No. 1 of Chelan County; P.O. Box 1231 Wenatchee, WA 98807–1231; *Jeff.Osborn@chelanpud.org,* (888) 663–8121.

i. *FERC Contact:* Krista Sakallaris, (202) 502–6302, *Krista.Sakallaris@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* March 25, 2019.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2145–127. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* PUD No. 1 of Chelan County proposes to permit the City of Entiat to construct a 13,234-square-foot-marina with 65 slips, two gangways, a headwalk dock, day use dock and fingers, overnight moorage docks, a fuel dock, and a sanitary pump station, within the Rocky Reach Hydroelectric Project's boundary. The proposed marina and related facilities would provide recreational lake access and boat moorage, for 69 watercraft, on the Columbia River in the City of Entiat, Chelan County, Washington.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 21, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03436 Filed 2–27–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OAR–2019–0049; FRL–9989–84–Region 8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Suncor Energy, Commerce City, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on a petition to object to a state operating permit.

SUMMARY: The EPA Administrator signed an order, dated December 20, 2018, denying the petition dated April 17, 2018, submitted by the Colorado Latino Forum, Colorado People's Alliance, Cross Community Coalition, Elyria and Swansea Neighborhood Association, the Sierra Club, and Western Resource Advocates (Petitioners). The Petition requested that the EPA object to the Clean Air Act (CAA) title V operating permit no. 96OPAD120 (Permit) issued by the Colorado Air Pollution Control Division (the Division) of the Colorado Department of Public Health and Environment for the Suncor Energy (U.S.A.) Inc., (Suncor) Commerce City Refinery, Plants 1 and 3 (the Refinery) in Adams County, Colorado. The Order constitutes a final action of the Petition.

ADDRESSES: You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view these documents. You may view the hard copies Monday through Friday, from 8:00 a.m. to 4:00 p.m., excluding federal holidays. The final Order and Petition are also available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Air Program, U.S. Environmental Protection Agency (EPA) Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7015, *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to, a title V operating permit proposed by state permitting authorities. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the CAA, a petition for judicial review of those portions of the Order that deny issues in the Petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

The EPA received a petition from the Petitioners dated April 17, 2018, requesting that the EPA object to the issuance of the Permit to Suncor for the Refinery located in Commerce City, Colorado. The Petition alleges that the Permit fails to ensure compliance with applicable requirements under the CAA in that: (I) The Division cannot lawfully establish a federally enforceable hydrogen cyanide (HCN) emissions limit solely to abet Suncor in avoiding its Emergency Planning and Community Right-to-Know Act and Comprehensive Environmental Response, Compensation, and Liability Act obligations; (II) the Division set an unlawful and arbitrarily high HCN emissions limit; (IIa) the HCN limit is based on an arbitrary estimate, rather than actual emission data; (IIb) the Division has not demonstrated that the HCN limit is at least as stringent as federal requirements; (IIc) Suncor's HCN emissions limit does not protect public health; and (III) the HCN emissions limit lacks adequate provisions to assure compliance.

On December 20, 2018, the Administrator issued an Order denying the Petition. The Order explains the EPA's basis for denying the petition.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may ask for judicial review of those portions of an order that deny issues raised in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than April 29, 2019.

Dated: February 22, 2019.

Douglas Benevento,

Regional Administrator, Region 8.

[FR Doc. 2019–03544 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0529; FRL–9988–65–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Mercury (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Mercury (EPA ICR Number 0113.13, OMB Control Number 2060–0097), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2019.

Public comments were previously requested, via the **Federal Register** on June 29, 2017, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 1, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0529, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury (40 CFR part 61, subpart E) apply to the new and existing facilities which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 61, subpart E.

Form Numbers: None.

Respondents/affected entities: Mercury ore processing facilities, mercury cell chlor-alkali plants, sludge incineration plants, and sludge drying plants.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart E).

Estimated number of respondents: 107 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 20,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,260,000 (per year), which includes $00.00 for annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is no change in the burden in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–03501 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9989–05]

Environmental Modeling Public Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Environmental Modeling Public Meeting (EMPM) will be held on Wednesday, March 27, 2019. This Notice announces the new time for the meeting. Location, agenda topics and supplementary information can be found in the original notice published in the **Federal Register**, of December 28, 2018 (83 FR 67282) (FRL–9987–26). The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, exposure, and ecotoxicity for pesticide risk assessments in a regulatory context.

DATES: The meeting will be held on March 27, 2019 from 9:00 a.m. to 4:30 p.m. Requests to participate in the meeting must be received on or before March 11, 2019.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), First Floor Conference Center (S–1200), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rebecca Lazarus or Andrew Shelby, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0520 and (703) 347–0119; fax number: (703) 305–0204; email address: *lazarus.rebecca@epa.gov* and *shelby.andrew@epa.gov.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 14, 2019,

Marietta Echeverria,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2019–03592 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0064; FRL–9987–84–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR),

NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (EPA ICR Number 1821.09, OMB Control Number 2060–0419), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2019. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before April 1, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0064, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 CFR part 63, subpart CCC) applies to all facilities that pickle steel using hydrochloric acid (HCl) or regenerate hydrochloric acid and are either major sources or part of a facility that is a major source. This regulation does not apply to any pickling line that uses an acid other than hydrochloric acid or an acid solution containing either less than 6 percent hydrochloric acid or at a temperature less than 100 °F. New facilities include those that commenced construction or reconstruction after the date of proposal.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart CCC.

Form numbers: None.

Respondents/affected entities: Steel pickling, hydrochloric acid process and regeneration facilities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 100 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 35,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,840,000 (per year), which includes $10,600 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: The decrease in labor hours from the most-recently approved ICR is the result of revising the assumption for the number of labor hours required to draft a revised operation and maintenance plan. This ICR assumes it takes less time to revise an existing operation and maintenance plan than it does to implement an initial plan.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–03502 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0365; FRL–9989–88–ORD]

Board of Scientific Counselors (BOSC) Air and Energy Subcommittee Meeting—March 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Air and Energy Subcommittee.

DATES: The meeting will be held on Friday, March 22, 2019, from 3:00 p.m. to 5:00 p.m.. All times noted are Eastern Time. The meeting may adjourn early if all business is finished. Attendees should register by March 21, 2019. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: The meeting will be a conference call and the number will be provided following registration at *https://www.eventbrite.com/e/us-epa-bosc-air-and-energy-subcommittee-teleconference-tickets-56359988242.*

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0365 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0365.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0365.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Air and Energy Subcommittee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW, Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0365.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW, Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0365. Note: This is not a mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC) Air and Energy Subcommittee Docket, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Tom Tracy, Mail Code 8104R, Office of Science Policy, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; via phone/voice mail at: (202) 564–6518; via fax at: (202) 565–2911; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: The meeting is open to the public. Any member of the public interested in receiving a draft agenda, attending the meeting, or making comments at the meeting may contact Tom Tracy, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, anyone making an oral presentation will be limited to a total of three minutes. All attendees must register online at *https://www.eventbrite.com/e/us-epa-bosc-air-and-energy-subcommittee-teleconference-tickets-56359988242* by March 21, 2019. Proposed agenda items for the meeting include but not limited to the following: Review of charge questions, draft subcommittee report and Subcommittee discussion.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: February 12, 2019.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2019–03558 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9989–83–OA]

Request for Nominations of Candidates to the Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC).

DATES: Nominations should be submitted in time to arrive no later than April 1, 2019.

FOR FURTHER INFORMATION CONTACT: For all inquiries, nominators should contact Mr. Aaron Yeow, Designated Federal Officer (DFO) for the CASAC, EPA Science Advisory Board Staff Office (1400R), 1200 Pennsylvania Ave. NW, Washington, DC 20460; by telephone at 202–564–2050 or by email at *yeow.aaron@epa.gov.* Anyone unable to submit electronic nominations may send a paper copy to Mr. Yeow.

SUPPLEMENTARY INFORMATION:

Background: The CASAC is a chartered Federal Advisory Committee, established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to provide advice, information and recommendations to the EPA Administrator on the scientific and technical aspects of air quality criteria and National Ambient Air Quality Standards (NAAQS). Members of the CASAC constitute a distinguished body of non-EPA scientists and engineers who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency.

Expertise Sought for CASAC: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: Advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As required under the CAA section 109(d), the CASAC is composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC with

expertise in ecology. The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience *relating to criteria pollutants (carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur oxides).* For further information about the CASAC membership appointment process and schedule, please contact Mr. Aaron Yeow, DFO, by telephone at 202–564–2050 or by email at *yeow.aaron@epa,gov.*

Selection Criteria for the CASAC

Nominees are selected based on their individual qualifications. Curriculum vitae should reflect the following:

—Demonstrated scientific credentials and disciplinary expertise in relevant fields;

—Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees; and

—Background and experiences that would help members contribute to the diversity of perspectives on the committee, *e.g.,* geographical, economic, social, cultural, educational backgrounds, professional affiliations; and other considerations.

—For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives is important.

As the committee undertakes specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: Absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How To Submit Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form under ''Public Input on Membership'' on the CASAC web page at *http://www.epa.gov/casac.* To be considered, all nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability or ethnicity.

The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's *curriculum vitae;* and a biographical sketch of the nominee indicating current position, educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. To help the agency evaluate the effectiveness of its outreach efforts, please indicate how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the CASAC website, should contact the DFO, as identified above. The DFO will acknowledge receipt of nominations and will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates on the CASAC website at *http://www.epa.gov/casac.* Public comments on each List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates may be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form is required for Special Government Employees (SGEs) and allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the CASAC home page at *http://www.epa.gov/casac.* This form should not be submitted as part of a nomination.

Dated: January 28, 2019.

Khanna Johnston,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2019–03557 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of 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.: 201251–001.

Agreement Name: Hapag-Lloyd/Maersk Line Slot Exchange Agreement.

Parties: Hapag Lloyd AG and Maersk Line A/S.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment provides for the on-going chartering of space in addition to the existing exchange of space under the Agreement.

Proposed Effective Date: 4/8/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10190.

Dated: February 22, 2019.

Rachel Dickon,

Secretary.

[FR Doc. 2019–03458 Filed 2–27–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1651]

Enhanced Disclosure of the Models Used in the Federal Reserve's Supervisory Stress Test

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final notification.

SUMMARY: The Board is finalizing an enhanced disclosure of the models used in the Federal Reserve's supervisory stress test conducted under the Board's Regulation YY pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Board's capital plan rule.

DATES: April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Associate Director, (202) 263–4833, Kathleen Johnson, Assistant Director, (202) 452–3644, Robert Sarama, Assistant Director (202) 973–7436, or Aurite Werman, Senior Financial Analyst, (202) 263–4802, Division of Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Senior Counsel, (202) 475–6682, or Asad Kudiya, Counsel, (202) 475–6358, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

Each year the Federal Reserve publicly discloses the results of the supervisory stress test.[1] The disclosures include revenues, expenses, losses, pre-tax net income, and capital ratios that would result under two sets of adverse economic and financial conditions. As part of the disclosures, the Federal Reserve also describes the broad framework and methodology used in the supervisory stress test, including information about the models used to estimate components of pre-tax net income and post-stress capital ratios in the stress test. The annual disclosures of both the stress test results and supervisory model framework and methodology represent a significant increase in the public transparency of large bank supervision in the U.S. since the 2007–2009 financial crisis.[2] Indeed, prior to the first supervisory stress test in 2009, many analysts and institutions cautioned against these disclosures, arguing that releasing bank-specific loss estimates to the public would be destabilizing. However, experience to date has shown the opposite to be true—disclosing these details to the public has garnered public and market confidence in the process.

The Federal Reserve routinely reviews its stress testing and capital planning programs, and during those reviews, the Federal Reserve has received feedback regarding the transparency of the supervisory stress test models.[3] Some of those providing feedback requested more detail on modeling methodologies with a focus on year-over-year changes in the supervisory models.[4] Others, however, cautioned against disclosing too much information about the supervisory models because doing so could permit firms to reverse-engineer the stress test.

The Federal Reserve recognizes that disclosing additional information about supervisory models and methodologies has significant public benefits, and is committed to finding ways to further increase the transparency of the supervisory stress test. More detailed disclosures could further enhance the credibility of the stress test by providing the public with information on the fundamental soundness of the models and their alignment with best modeling practices. These disclosures would also facilitate comments on the models from the public, including academic experts. These comments could lead to improvements, particularly in the data most useful to understanding the risks of particular loan types. More detailed disclosures could also help the public understand and interpret the results of the stress test, furthering the goal of maintaining market and public confidence in the U.S. financial system. Finally, more detailed disclosures of how the Federal Reserve's models assign losses to particular positions could help those financial institutions that are subject to the stress test understand the capital implications of changes to their business activities, such as acquiring or selling a portfolio of assets.

The Federal Reserve also believes there are material risks associated with fully disclosing the models to the firms subject to the supervisory stress test. One implication of releasing all details of the models is that firms could conceivably use them to make modifications to their businesses that change the results of the stress test without actually changing the risks they face. In the presence of such behavior, the stress test could give a misleading picture of the actual vulnerabilities faced by firms. Further, such behavior could increase correlations in asset holdings among the largest banks, making the financial system more vulnerable to adverse financial shocks.[5] Another implication is that full model disclosure could incent banks to simply use models similar to the Federal Reserve's, rather than build their own capacity to identify, measure, and manage risk. That convergence to the Federal Reserve's model would create a ''model monoculture'' in which all firms have similar internal stress testing models, and this could cause firms to miss key idiosyncratic risks that they face.[6]

I. Proposed Enhanced Model Disclosure

On December 15, 2017, the Board invited comment on a proposal to enhance the disclosures of those models.[7] The proposed enhancements were designed to balance the costs and benefits of model disclosure in a way that would further enhance the public's understanding of the supervisory stress test models without undermining the effectiveness of the stress test as a supervisory tool. The proposed enhanced disclosures contained three components: (1) Enhanced descriptions of supervisory models, including key variables; (2) modeled loss rates on loans grouped by important risk characteristics and summary statistics associated with the loans in each group; and (3) portfolios of hypothetical loans and the estimated loss rates associated with the loans in each portfolio.[8]

The proposed enhanced descriptions of the models would have expanded the existing model descriptions in two ways. First, they would have provided more detailed information about the structure of the models by including certain important equations that characterize aspects of the model. Second, they would have included a table that contains a list of the key variables that influence the results of a given model, and the table would show the relevant variables for each component of the model (*e.g.,* PD, LGD,

[1] See, for example, *Dodd-Frank Act Stress Test 2018: Supervisory Stress Test Methodology and Results,* June 2018, and *Comprehensive Capital Analysis and Review 2018: Assessment Framework and Results,* June 2018.

[2] In addition to those public disclosures, the Federal Reserve has published detailed information about its scenario design framework and annual letters detailing material model changes. The Federal Reserve also hosts an annual symposium in which supervisors and financial industry practitioners share best practices in modeling, model risk management, and governance.

[3] During a review that began in 2015, the Federal Reserve received feedback from senior management at firms subject to the Board's capital plan rule, debt and equity market analysts, representatives from public interest groups, and academics in the fields of economics and finance. That review also included an internal assessment.

[4] Some of the comments in favor of additional disclosure included requests that the Federal Reserve provide additional information to firms only, without making the additional disclosures public. Doing so would be contrary to the Federal Reserve's established practice of not disclosing information related to the stress test to firms if that information is not also publicly disclosed.

[5] For example, if firms were to deem a specific asset as more advantageous to hold based on the particulars of the supervisory models, and an exogenous shock were to occur to that specific asset class, the firms' losses would be magnified because they held correlated assets.

[6] *See* Til Schuermann, ''The Fed's Stress Tests Add Risk to the Financial System,'' *Wall Street Journal,* March 19, 2013.

[7] 82 FR 59547 (December 15, 2017).

[8] The second and third components would have been provided for the models used to project losses on the most material loan portfolios.

EAD), along with information about the source of the variables.

The proposed enhanced disclosure would have included estimated loss rates for groups of loans with distinct characteristics, which would allow the public to directly see how supervisory models treat specific assets under stress. To shed more light on the degree of heterogeneity of loans within a given group, the proposed enhanced disclosure would also have included summary statistics associated with the loans in each group.

The proposed enhanced disclosure would have included the publication of portfolios of hypothetical loans, along with supervisory projected loss rates on the portfolios. The portfolios of hypothetical loans would have been designed to mimic the characteristics of the actual loans reported by firms participating in the stress test, but would not have contained any individual firm's actual loan portfolio or any actual loans reported by firms. The set of variables included for each portfolio would have been designed such that the public could independently estimate loss rates for these portfolios, although the set would not necessarily have included every variable that might be included in a loss model for the relevant loan type.

Under the proposal, the Board would have provided enhanced versions of the supervisory model descriptions that are currently published in the model description appendix of the Board's annual disclosures of supervisory stress test results, and the Board would also have provided modeled loss rates on groups of loans and the loss rates associated with portfolios of hypothetical loans for the most material loan portfolios. The Board would have expected to publish its enhanced disclosure in the first quarter of each calendar year, and the annual disclosure in any given year would reflect updates to supervisory models for that stress test cycle, but would be based on data and scenarios from the prior stress test cycle.

II. Summary of Comments

The Board received twelve comment letters in response to the proposal. Commenters included public interest groups, academics, individual banking organizations, and trade and industry groups. Commenters generally expressed support for the proposal, and provided suggestions regarding future model disclosures.

A. Fully Disclosing Models for Notice and Comment

Commenters were divided in their views on the appropriate level of transparency. Some commenters recommended full disclosure of supervisory models published by the Board through the public notice and comment process, suggesting that this would result in more accurate models. Other commenters expressed the view that the Federal Reserve should fully disclose material aspects of the models such as underlying formulas, equations, model backtesting, validation outcomes, and limitations, to enable the public to evaluate the reliability of the Federal Reserve's results. However, other commenters opposed full transparency of supervisory models, indicating that it is important for the stress test to remain flexible and for it not to be perfectly predictable by the companies subject to it. One commenter cited a historical study of the Office of Federal Housing Enterprise Oversight (OFHEO) stress test, noting that the full disclosure of the OFHEO stress test model rendered that stress test ineffective.

As discussed above, the proposed enhancements were designed to balance the costs and benefits of disclosure in a way that would further facilitate the public's understanding of the supervisory stress test models without undermining the effectiveness of the stress test as a supervisory tool. More detailed disclosures can enhance the credibility of the stress test and lead to its improvement, but full disclosure of all details related to supervisory models could make the financial system at large more vulnerable by allowing firms to make modifications to their businesses that would change their supervisory stress test results without materially changing their risk profile. The Board views the proposal as striking an appropriate balance between enhancing model transparency and maintaining the efficacy of the stress test, and is therefore adopting the enhancements as proposed, with modifications as described below. The Board intends to continue to improve its disclosures and to consider ways to further increase the transparency of the stress test.

B. Content of Disclosures of Models

Commenters were generally supportive of the proposed enhancements to the model disclosures. Several commenters asserted that the portfolios of hypothetical loans in particular would help the public understand the models. Consistent with the proposal, commenters requested that the Board provide detailed descriptions of modeling assumptions and equations.

Some commenters expressed the view that the Board should publish a more detailed model disclosure than the one provided in the proposal. These commenters requested decompositions that explain the proportion of changes from scenarios, portfolio composition, model changes, and additional details about model backtesting and assumptions. One commenter stated that the Board should provide a comprehensive explanation of the cost and benefit analysis used to determine the content of its proposed enhanced model disclosure.

The Board intends to publish enhanced versions of the supervisory model descriptions that are currently published in the model description appendix of the Board's annual disclosures of supervisory stress test results, and to publish the loss rates on groups of loans and portfolios of hypothetical loans and associated loss rates for the most material loan portfolios. In prior stress test results disclosures, the Board has discussed the key drivers of the supervisory stress test results, such as changes in firms' portfolio composition, and the Board intends to continue to consider ways to provide additional information on key drivers of aggregate results as appropriate.

One commenter outlined proposed variables on which to group loan loss rates in the enhanced disclosure. The segments the commenter suggested for corporate loans were generally consistent with those segments the Board provided in the example of disclosure for the corporate loan loss model in the proposal.

C. Disclosure of Specific Models

Commenters requested more detail on the models used to project pre-provision net revenue (PPNR) and operational-risk losses in the supervisory stress test. Several commenters specifically requested enhanced disclosure of the components of PPNR (*i.e.,* net interest income, noninterest income, and noninterest expense), including additional detail on the structure, characteristics, and variables used to model each component of PPNR. One commenter requested forecasted PPNR metrics by scenario for hypothetical firms.

Commenters also requested that enhanced disclosure be provided for a number of other models, including the models used to project other-than-temporary losses on securities, other comprehensive income, losses associated with the global market shock and associated losses, deferred tax assets, loan loss provisions, the purchase accounting treatment for material business plan changes, and transfer pricing revenues. One commenter requested that the Board

release supervisory models used to project losses for previous stress tests.

The Board intends to include in its enhanced model disclosure detailed descriptions of the supervisory models that are currently addressed in the model description appendix of the Board's annual disclosure of supervisory stress test results, including the models used to project PPNR and operational-risk losses. These descriptions would contain the structural form of key model equations and key input variables. Further, the Board intends to publish projections of certain components of PPNR, including net interest income, noninterest income, and noninterest expense, for each covered company in its annual results disclosure.

The detailed disclosure of modeled loss rates similar to the example provided in the proposal requires loan- or security-level data reported to the Board on a regular basis; therefore, such disclosures are not feasible for certain types of models or calculations, such as the calculation of deferred tax assets. The Board intends to publish enhanced modeled loss rate disclosures for the most material loan portfolios over the next several years, starting with two of the most material loan portfolios in 2019. Over time, the Federal Reserve will extend enhanced modeled loss rate disclosures to non-loan portfolios, such as securities. The specific portfolios and the level of detail provided for each portfolio will depend on constraints such as those related to vendor data contracts, where applicable.

Models used in previous years are described in the Board's annual disclosure of supervisory stress test results.

D. Timing of Enhanced Model Disclosure

Some commenters requested that enhanced disclosure be provided in early January of each calendar year. Another commenter asserted that the benefits of a stress test model disclosure are maximized and costs are minimized when disclosure takes place after the stress tests are completed.

Consistent with the proposal, the Board expects to publish details about the models in the first quarter of each calendar year. Specifically, the Board expects to publish enhanced model descriptions for all models and enhanced modeled loss rate disclosures for two of the most material loan models in the first quarter of 2019. In 2020, the Board intends to revise enhanced model descriptions, as appropriate, and to publish enhanced modeled loss rate disclosures for two additional models.

Publication of the supervisory model disclosure prior to the release of the supervisory stress test results will help firms and the public anticipate the extent to which changes in supervisory results may result from changes in the models. In recent years, the Board has increased the information it provides to the public about supervisory models, and has detailed material model changes in an annual letter published in advance of the stress test. The Board believes that the benefits of providing that information in advance of the stress test outweigh the costs of doing so.

By order of the Board of Governors of the Federal Reserve System, February 22, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–03505 Filed 2–27–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies (FR 4027; OMB No. 7100–0327).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, without revision, (or the implementation) of the following information collection:

Report title: Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies.

Agency form number: FR 4027.

OMB control number: 7100–0327.

Frequency: Annual.

Respondents: Banking organizations.

Estimated number of respondents: One-time implementation for large institutions: 1; one-time implementation for small institutions: 1; ongoing maintenance: 5,710.

Estimated average hours per response: One-time implementation for large institutions: 480; one-time implementation for small institutions: 80; ongoing maintenance: 40.

Estimated annual burden hours: 228,960.

General Description of Report

Compatibility With Effective Controls and Risk Management

Pursuant to Principle 2 of the Guidance, a banking organization's risk-management processes and internal controls should reinforce and support the development and maintenance of balanced incentive compensation arrangements. Principle 2 states that banking organizations should create and maintain sufficient documentation to permit an audit of the organization's processes for establishing, modifying, and monitoring incentive compensation arrangements. Additionally, large banking organizations should maintain policies and procedures that (i) identify and describe the role(s) of the personnel, business units, and control units authorized to be involved in the design, implementation, and monitoring of incentive compensation arrangements; (ii) identify the source of significant risk-related inputs into these processes and establish appropriate controls governing the development and approval of these inputs to help ensure their integrity; and (iii) identify the

individual(s) and control unit(s) whose approval is necessary for the establishment of new incentive compensation arrangements or modification of existing arrangements.

Strong Corporate Governance

Pursuant to Principle 3 of the Guidance, banking organizations should have strong and effective corporate governance to help ensure sound compensation practices. The Guidance states that a banking organization's board of directors should approve and document any material exceptions or adjustments to the organization's incentive compensation arrangements established for senior executives.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to sections 9, 11(a), 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 325, 602, and 625); section 5 of the Bank Holding Company Act (12 U.S.C. 1844); section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2)); section 7(c) of the International Banking Act (12 U.S.C. 3105(c)); and section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1(c)).

Because the recordkeeping provisions are contained within guidance, which is nonbinding, they are voluntary. There are no reporting forms associated with this information collection.

Because the incentive compensation records would be maintained at each banking organization, the Freedom of Information Act (''FOIA'') would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information is considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process (5 U.S.C. 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)).

Current actions: On November 30, 2018, the Board published a notice in the **Federal Register** (83 FR 61637) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies. The comment period for this notice expired on January 29, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 21, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–03485 Filed 2–27–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2019.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications @ny.frb.org:*

1. *NBC Bancorp, Inc.,* Coxsackie, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Coxsackie, Coxsackie, New York.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Forward Mutual Holding Company, and Forward Financial, Inc., both of Marshfield, Wisconsin;* to become bank holding companies by acquiring The First National Bank of Park Falls, Parks Falls, Wisconsin.

Board of Governors of the Federal Reserve System, February 25, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–03506 Filed 2–27–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Domestic Branch Notification (FR 4001; OMB No. 7100–0097).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended,

revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following information collection:

Report title: Domestic Branch Notification.

Agency form number: FR 4001.

OMB control number: 7100–0097.

Frequency: On occasion.

Respondents: State member banks (SMBs).

Estimated number of respondents: 320.

Estimated average hours per response: Expedited notifications, 1.5 hours; and nonexpedited notifications, 2 hours.

Estimated annual burden hours: Expedited notifications, 98 hours; and nonexpedited notifications, 510 hours.

General description of report: The Federal Reserve Act and the Board's Regulation H require a state member bank to seek prior approval of the Federal Reserve System before establishing or acquiring a domestic branch. Such requests for approval must be filed as applications at the appropriate Reserve Bank for the state member bank. Due to the limited information that a state member bank generally has to provide for branch proposals, there is no formal reporting form for a domestic branch application. A state member bank is required to notify the Federal Reserve by letter of its intent to establish one or more new branches and provide with the letter evidence that public notice of the proposed branch(es) has been published by the state member bank in the appropriate newspaper(s).[1] The Federal Reserve uses the information provided to fulfill its statutory obligation to review branch applications before acting on the proposals and otherwise to supervise state member banks.

Legal authorization and confidentiality: The Board's filing requirements associated with Domestic Branch Notification are authorized under section 9(3) of the Federal Reserve Act (12 U.S.C. 321), which requires state member banks to obtain Board approval before establishing a domestic branch (Board's Regulation H (12 CFR 208.6)). The obligation of state member banks to request prior approval from the Federal Reserve to establish a domestic branch is mandatory. The information contained in a state member bank's Domestic Branch Notification is considered public. A state member bank's request that any portion(s) of a Domestic Branch Notification be kept confidential pursuant to exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) must be submitted in accordance with section 261.15 of the Board's Rules Regarding Availability of Information (12 CFR 261.15).

Current actions: On November 30, 2018, the Board published a notice in the **Federal Register** (83 FR 61636) requesting public comment for 60 days on the extension, without revision, of the Domestic Branch Notification. The comment period for this notice expired on January 29, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 22, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–03484 Filed 2–27–19; 8:45 am]

BILLING CODE 6210–01–P

[1] Per Rules of Procedure (12 CFR 262), Board regulations require the use of newspaper for public notifications. For the purposes of FR 4001, the newspaper used must be in the general circulation of the community or communities in which the head office of the bank and the proposed branch are located.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10688, CMS–10286, CMS–10492 and CMS–10433]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 1, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Home Health (HH) National Provider Survey; *Use:*

Section 1890A(a)(6) of the Social Security Act (the Act) requires the Secretary of HHS every three years to assess the quality and efficiency effects of the use of endorsed measures in specific Medicare quality reporting and incentive programs. This request is for review and approval of a survey and qualitative interview guide for the home health setting, which CMS proposes to use to address critical needs regarding the impact of use of quality and efficiency measures in the home health setting, including the burden they impose on home health agencies.

CMS plans to use the findings from surveys and qualitative interviews for multiple purposes. The qualitative interviews and standardized survey will inform CMS about the impact of measures used to assess care in HHAs. The surveys will help CMS understand whether the use of performance measures has been associated with changes in HHA behavior—namely, what QI investments HHAs are making and whether adoption of QI changes is associated with higher performance on the measures. The survey will help CMS identify characteristics associated with high performance, which, if understood, could be used to leverage improvements in care among lower-performing HHAs. The survey and interviews, assuming approval by August 2019, would be fielded from fall 2019 through spring 2020. *Form Number:* CMS–10688 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 1,040; *Total Annual Responses:* 1,040; *Total Annual Hours:* 1,040. (For policy questions regarding this collection contact Noni Bodkin at 410–786–7837.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Research Exception under the Genetic Information Nondiscrimination Act; *Use:* Under the Genetic Information Nondiscrimination Act of 2008 (GINA), a plan or issuer may request (but not require) a genetic test in connection with certain research activities so long as such activities comply with specific requirements, including: (i) The research complies with 45 CFR part 46 or equivalent federal regulations and applicable State or local law or regulations for the protection of human subjects in research; (ii) the request for the participant or beneficiary (or in the case of a minor child, the legal guardian of such beneficiary) is made in writing and clearly indicates that compliance with the request is voluntary and that non-compliance will have no effect on eligibility for benefits or premium or contribution amounts; and (iii) no genetic information collected or acquired will be used for underwriting purposes. The Secretary of Labor or the Secretary of Health and Human Services is required to be notified if a group health plan or health insurance issuer intends to claim the research exception permitted under Title I of GINA. Nonfederal governmental group health plans and issuers solely in the individual health insurance market or Medigap market will be required to file with the Centers for Medicare & Medicaid Services (CMS). The Notice of Research Exception under the Genetic Information Nondiscrimination Act is a model notice that can be completed by group health plans and health insurance issuers and filed with either the Department of Labor or CMS to comply with the notification requirement. *Form Number:* CMS–10286 (OMB control number: 0938–1077); *Frequency:* Occasionally; *Affected Public:* Private Sector; State, Local or Tribal governments; *Number of Respondents:* 2; *Total Annual Responses:* 2; *Total Annual Hours:* 0.5. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Submission for the Federally-facilitated Exchange User Fee Adjustment; *Use:* Section 2713 of the Public Health Service Act requires coverage without cost sharing of certain preventive health services, including certain contraceptive services, in non-exempt, non-grandfathered group health plans and health insurance coverage. The final regulations establish rules under which the third party administrator of the plan would provide or arrange for a third party to provide separate contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. Eligible organizations are required to self-certify that they are eligible for this accommodation and provide a copy of such self-certification to their third party administrators. The final rules also set forth processes and standards to fund the payments for the contraceptive services that are provided for participants and beneficiaries in self-insured plans of eligible organizations under the accommodation described previously, through an adjustment in the FFE user fee payable by an issuer participating in an FFE.

CMS will use the data collections from participating issuers and third party administrators to verify the total dollar amount for such payments for contraceptive services provided under this accommodation for the purpose of determining a participating issuer's user fee adjustment. The attestation that the payments for contraceptive services were made in compliance with 26 CFR 54.9815–2713A(b)(2) or 29 CFR 2590.715–2713A(b)(2) will help ensure that the user fee adjustment is being utilized to provide contraceptive services for the self-insured plans in accordance with the previously noted accommodation. *Form Number:* CMS–10492 (OMB control number: 0938–1285); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 861; *Total Annual Responses:* 861; *Total Annual Hours:* 12,930. (For policy questions regarding this collection contact Alper Ozinal (301) 492–4178.)

4. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Data Collection to Support QHP Certification and other Financial Management and Exchange Operations; *Use:* As directed by the rule Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310) (Exchange rule), each Exchange is responsible for the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain minimum certification standards, such as network adequacy, inclusion of Essential Community Providers (ECPs), and non-discrimination. The Exchange is responsible for ensuring that QHPs meet these minimum certification standards as described in the Exchange rule under 45 CFR 155 and 156, based on the Patient Protection and Affordable Care Act (PPACA), as well as other standards determined by the Exchange. Issuers can offer individual and small group market plans outside of the Exchanges that are not QHPs.

The instruments in this information collection will be used for the 2020 certification process and beyond. Providing these instruments now will give issuers and other stakeholders more opportunity to familiarize themselves with the instruments before releasing the 2020 application. *Form Number:* CMS–10433 (OMB control number:

0938–1187); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments, Private Sector (Business or other for-profits); *Number of Respondents:* 2,892; *Number of Responses:* 2,892; *Total Annual Hours:* 68,666. (For questions regarding this collection contact Joshua Annas at 301–492–4407.)

Dated: February 22, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–03459 Filed 2–27–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10065/10066]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

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

ACTION: Correction of notice.

SUMMARY: This document corrects the information provided for [Document Identifier: CMS–10065/10066] titled ''Hospital Notices: IM/DND.''

FOR FURTHER INFORMATION CONTACT: William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the February 22, 2019, issue of the **Federal Register** (84 FR 5690), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the information collection request identified under CMS–10065/10066, OMB control number 0938–1019, and titled ''Hospital Notices: IM/DND.''

II. Explanation of Error

In the February 22, 2019, notice, the information provided in the second column in the middle of the notice, on page 5691, was published with incorrect information at the end of the notice. This notice corrects the language found at the end of the notice, under the second column in the middle of the notice, on page 5691 of the February 22nd notice. The related public comment period remains in effect and ends April 23, 2019.

III. Correction of Error

In FR Doc. 2019–03015 of February 22, 2019 (84 FR 5690), page 5691, the language in the second column, in the middle of the notice that begins with ''[(For policy questions regarding'' and ends with ''1799.)]'' is corrected to read as follows:

[(For policy questions regarding this collection contact Janet Miller at *Janet.Miller@cms.hhs.gov.*)]

Dated: February 22, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–03462 Filed 2–27–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Descriptive Study of the Unaccompanied Refugee Minors Program (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) at the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing data collection activities as part of a project to better understand the range of child welfare services and benefits provided through the Unaccompanied Refugee Minors (URM) Program.

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

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection activities to be submitted in the Descriptive Study of the Unaccompanied Refugee Minors Program package include:

1. Survey of State Refugee Coordinators (SRCs) from the 15 states with URM programs.

2. Survey of URM Program Directors from all 22 URM programs.

3. Survey of Private Custody Child Welfare Agency Administrators from nine states with private custody arrangements.

4. Interviews with URM Program Managers from six URM programs.

5. Interviews with URM Program Staff (*e.g.,* case managers, data managers) from six URM programs.

6. Interviews with Child Welfare Agency Administrators who have contact with six URM programs.

7. Interviews with Community Partners including leadership and line staff from local organizations, such as health care and mental health care providers, legal aid organizations, and faith-based groups serving the URM population at six URM program sites.

8. Interviews with Community Partners in the field of education, such as school administrators and counselors, and organizations providing English language education and support at six URM program sites.

9. Focus Groups for URM Youth from six URM programs.

10. Focus Groups for URM Foster Families from six URM programs.

Respondents: State Refugee Coordinators and supporting staff, URM Program Directors and supporting staff, Child Welfare Agency Administrators and supporting staff, URM program staff (case workers, data managers, and other staff), staff from community partner organizations (*e.g.,* health and mental health service providers, education service providers, faith-based organizations), URM youth, and URM foster families.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of State Refugee Coordinators	38	1	0.67	25
Survey of URM Program Directors	55	1	1	55
Survey of Private Custody Child Welfare Agency Administrators	21	1	0.67	14
Interviews with URM Program Managers	9	1	1.5	14
Interviews with URM Program Staff	36	1	1.5	54
Interviews with Child Welfare Agency Administrators	26	1	1	26
Interviews with Community Partners [General]	48	1	1	48
Interviews with Community Partners [Education]	12	1	1	12
Focus Groups with URM Youth	54	1	1.5	81
Focus Groups with URM Foster Families	54	1	1.5	81

Estimated Total Annual Burden Hours: 410.

Authority: Section 1110 of the Social Security Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–03489 Filed 2–27–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0639]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR). The general function of the committee is to provide advice and recommendations to the Agency on research being conducted at the NCTR. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on March 19, 2019, from 8 a.m. to 5:45 p.m., and on March 20, 2019, from 8 a.m. to 11:30 a.m.

ADDRESSES: Heifer Village, 1 World Avenue, Little Rock, AR 72202. 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* and *https://www.heifer.org/what-you-can-do/experience-heifer/heifer-village/index.html.*

FOR FURTHER INFORMATION CONTACT: Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892; 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 19, 2019, the SAB Chair will welcome the participants, and the NCTR Director will provide a Center-wide update on scientific initiatives and accomplishments during the past year. The SAB will be presented with an overview of the SAB Subcommittee Site Visit Report and a response to this review. There will be updates from the NCTR Research Divisions and a public comment session.

On March 20, 2019, there will be a statement given by the FDA Chief Scientist. The Center for Biologics and Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Food Safety and Applied Nutrition, and Center for Tobacco Products will each briefly discuss their center-specific research strategic needs and potential areas of collaboration.

Following an open discussion of all the information presented, the open session of the meeting will close so the SAB members can discuss personnel issues at NCTR at the end of each day.

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 19, 2019, from 8 a.m. to 5:45 p.m., and March 20, 2019, from 8 a.m. to 11:30 a.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 12, 2019. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 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 14, 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 14, 2019.

Closed Committee Deliberations: On March 19, 2019, from 5:45 p.m. to 6 p.m., and March 20, 2019, from 11:30 a.m. to 12 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)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

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 Donna Mendrick 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 25, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03562 Filed 2–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3631]

Agency Information Collection Activities; Proposed Collection; Comment Request; Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with the standards for the growing, harvesting, packing, and holding of produce for human consumption.

DATES: Submit either electronic or written comments on the collection of information by April 29, 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 29, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 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–D–3631 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *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.

Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; 21 CFR Part 112

OMB Control Number 0910–0816—Revision

To minimize the risk of serious adverse health consequences or death from consumption of contaminated produce, we have established science-based minimum standards for the safe growing, harvesting, packing, and holding of produce, meaning fruits and vegetables grown for human consumption. The standards are codified in part 112 (21 CFR part 112) and set forth procedures and processes that include information collection activities such as establishing monitoring and sampling plans, documenting data and training, and ensuring disclosure that produce for human consumption meets these requirements. The regulations also provide for certain exemptions and variances to qualified respondents. We use the information to verify that the standards established by the regulation are followed such that produce entering the marketplace is reasonably assured to be safe.

In addition to the referenced regulations, we have developed a draft guidance entitled ''Compliance with and Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations'' (''Sprouts draft guidance'') available at *https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm.* Sprouts represent a special food safety concern because the conditions under which they are produced (time, temperature, water activity, pH, and available nutrients) are ideal for the growth of pathogens, if present. The draft guidance, when finalized, will assist sprout operations subject to the regulations in part 112 to comply with the sprout-specific requirements in subpart M.

Description of Respondents: Respondents to this information collection include farms that grow, harvest, pack, or hold produce for human consumption, meaning fruits and vegetables such as berries, tree nuts, herbs, and sprouts. Respondents are from the private sector (for-profit businesses).

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity in 21 CFR Part 112	Number of recordkeepers	Number of records per recordkeeper [1]	Total annual records	Average burden per recordkeeping (in hours) [2]	Total hours
Exemptions under § 112.7	3,285	1	3,285	0.5 (30 minutes)	1,643
Training under § 112.30	24,420	1	24,420	7.25	177,045
Testing requirements for agricultural water under §§ 112.44 and 112.45.	48,361	2.990	144,599	0.825 (~50 minutes)	119,294
Records related to agricultural water	160,605	2.242	360,076	2.160	777,765
Testing requirements for sprouts under §§ 112.144, 112.145, and 112.147.	256	245.660	62,889	0.403 (~24 minutes)	25,344
Records related to sprouts	1,023	62.061	63,488	0.174 (~11 minutes)	11,047
Following Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations.	1,023	1	1,023	1	1,023
Documentation supporting compliance with § 112.2.	4,568	1	4,568	0.079	361
Total	243,541		664,348		1,113,522

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers rounded to nearest 1/1000.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Part 112	Number of respondents	Number of disclosures per respondent	Total disclosures	Average burden per disclosure (in hours)	Total hours
Disclosure under §§ 112.2, 112.6, 112.31, 112.33, and 112.142	77,165	3.459	266,914	1.422	379,551

[1] There are no capital costs or operating or maintenance costs associated with annual disclosure.

Section 112.7 (21 CFR 112.7) requires farms eligible for the qualified exemption in accordance with § 112.5 (21 CFR 112.5) to maintain the records necessary to demonstrate that the farm satisfies the criteria for the qualified exemption, including a written record reflecting that the owner, operator, or agent in charge of the farm has performed an annual review and verification of the farm's continued eligibility for the qualified exemption. We estimate that 3,285 farms are eligible for the qualified exemption and that each farm will spend an average of 0.5 hours per year to maintain one record. Therefore, 3,285 recordkeepers × 0.5 average hours per recordkeeping = 1,642.5 hours (rounded to 1,643) to meet the recordkeeping requirements of § 112.7.

Section 112.30 (21 CFR 112.30) requires the maintenance of records of required training of personnel, including the date of training, topics covered, and persons trained. We estimate that 24,420 farms will maintain one record of required training and spend an average of 7.25 hours per year on recordkeeping. Therefore, 24,420 recordkeepers × 7.25 average hours per recordkeeping = 177,045 hours to meet the recordkeeping requirements of § 112.30.

Section 112.46 (21 CFR 112.46) requires testing agricultural water subject to the requirements of §§ 112.44 and 112.45 (21 CFR 112.44 and 112.45). We estimate that 48,361 farms that will conduct these tests. Thus, it is estimated that about three (2.990) records for each farm will spend an average of 0.825 hours per record on testing water. Therefore, 48,361 farms × 2.990 records × 0.825 average hours per recordkeeping = 119,294.175 hours (rounded to 119,294) to meet the recordkeeping requirements of §§ 112.44 and 112.45.

For records related to agricultural water, FDA estimates that there are 160,605 recordkeepers each maintaining just over 2 records (2.242), with each recordkeeping taking just over 2 hours (2.160). Therefore, 160,605 recordkeepers × 2.242 records × 2.160 hours = 777,765.046 hours (rounded to 777,765) for the recordkeeping burden related to agricultural water.

Sections 112.144, 112.145, and 112.147 (21 CFR 112.144, 112.145, and 112. 147) require testing for sprouts. We estimate that 256 recordkeepers will conduct these tests. Thus, it is estimated that about 245 (245.660) records for each recordkeeper will spend an average of 0.403 hour per record on testing sprouts. Therefore, 256 recordkeepers × 245.660 records × 0.403 average hours per recordkeeping = 25,344.251 hours (rounded to 25,344) to meet the recordkeeping requirements of §§ 112.144, 112.145, and 112.147.

We estimate that there are 1,023 recordkeepers for other records related to sprouts. Thus, it is estimated that about 62 (62.061) records for each recordkeepers will spend an average of 0.174 hour per record. Therefore, 1,023 recordkeepers × 62.061 records × 0.174 average hour per recordkeeping = 11,046.982 (rounded to 11,047) hours for the burden to maintain records related to sprouts.

We estimate 1,023 recordkeepers will utilize the recommendations in the Sprouts draft guidance, once finalized, to maintain additional records related to sprouts. We estimate each recordkeeping will take about an hour for a recordkeeping burden of 1,023 hours.

Section 112.2 relates to documentation supporting compliance. We estimate that there are 4,568 recordkeepers each maintaining a record of compliance. We estimate that each recordkeeper will spend 0.079 hour maintaining their record. Therefore, 4,568 recordkeepers × 0.079 hour = 360.872 (rounded to 361) hours for the burden to maintain documentation supporting compliance.

Sections 112.2, 112.6, 112.31, 112.33, and 112.142 (21 CFR 112.2, 112.6, 112.31, 112.33, and 112.142) require third-party disclosures. We estimate that 77,165 respondents are making these disclosures. Thus, it is estimated that each respondent has around three (3.459) disclosures and will spend an average of 1.422 hours per disclosure. Therefore, 77,165 respondents × 3.459 disclosures × 1.422 average hours per disclosure = 379,551.331 hours (rounded to 379,551) for the third-party disclosure burden to meet the requirements of §§ 112.2, 112.6, 112.31, 112.33, and 112.142.

The burden estimate reflects adjustments resulting in an overall decrease of 19,847 hours. We have removed one-time burden that has been realized since establishing the regulations; however, we have added burden we attribute to our estimate of recordkeepers following the recommendations in the Sprouts draft guidance.

Dated: February 25, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03507 Filed 2–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0407]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before April 29, 2019.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0407–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any

other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Think Cultural Health (TCH) website Quality Improvement Effort—OMB No. 0990–0407—Revision—HHS/OS/OMH.

Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting approval by OMB on a revision to a previously approved data collection. The Think Cultural Health (TCH) website is an initiative of the HHS OMH's Center for Linguistic and Cultural Competence in Health Care (CLCCHC), and is a repository of the latest resources and tools to promote cultural and linguistic competency in health and health care. The TCH website is unlike other government websites in that its suite of e-learning programs affords health and health care professionals the ability to earn continuing education credits through training in cultural and linguistic competency. The revision to this information collection request includes the online website registration form, course/unit evaluations specific to the resource or e-learning program course/unit completed, follow up surveys, focus groups, and key informant interviews.

Need and Proposed Use of the Information: The data will be used to ensure that the offerings on the TCH website are relevant, useful, and appropriate to their target audiences. The findings from the data collection will be of interest to HHS OMH in supporting maintenance and revisions of the offerings on the TCH website.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Type of respondent	Number of respondent	Number responses per respondent	Average burden per response (hours)	Total burden (hours)
Registration Form	Health and Health Care Professionals	9,460	1.00	3/60	473
Course/unit Evaluation Form.	Health and Health Care Professionals	9,460	1.00	5/60	788
Follow-Up Survey	Health and Health Care Professionals	4,208	1.00	10/60	701
Follow-Up Survey	Community Health Workers	6	2.00	10/60	2
Focus Groups	Health and Health Care Professionals	15	1.00	120/60	29
Key Informant Interviews	Health and Health Care Professionals	13	1.00	60/60	13
Key Informant Interviews	Community Health Workers	25	1.00	60/60	25
Total		23,187			2,031

Terry Clark,

Asst Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2019–03546 Filed 2–27–19; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Service Strategic Plan Fiscal Year 2019–2023

AGENCY: Indian Health Service, IHS.

ACTION: Notice.

SUMMARY: In follow-up to the Indian Health Service (IHS) request for comments on the Draft IHS Strategic Plan Fiscal Year (FY) 2018–2022 issued in the **Federal Register** (FR) on July 24, 2018, (see 83 FR 35012; July 24, 2018; hereafter ''July 2018 FR document''), the IHS is announcing the final plan entitled: IHS Strategic Plan FY 2019–2023. The IHS is also making available on the IHS Strategic Plan website, a response to comments document that addresses comments received on the Draft IHS Strategic Plan from the July 2018 FR document.

FOR FURTHER INFORMATION CONTACT: RADM Francis Frazier, Director, Office of Public Health Support, IHS, 5600 Fishers Lane, Mail Stop: 09E10D, Rockville, Maryland 20857. Telephone number: 301–443–0222 (This is not a toll-free number), email address: *IHSStrategicPlan@ihs.gov.* In addition, progress on the IHS Strategic Plan will be periodically updated on the IHS website at: *https://www.ihs.gov/strategicplan/.*

SUPPLEMENTARY INFORMATION:

General Information

The IHS, an agency within the U.S. Department of Health and Human Services (HHS), is responsible for providing federal health services to American Indians and Alaska Natives. The provision of health services to members of federally-recognized Tribes grew out of the special government-to-government relationship between the federal government and Indian Tribes. Established in 1787, this relationship is based on Article I, Section 8 of the U.S. Constitution and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders. The IHS is the principal federal health care provider and health care advocate for Indian people. The IHS provides a comprehensive health service delivery system for American Indians and Alaska Natives.

The IHS Strategic Plan, covering FY 2019–2023, includes a mission statement, a vision statement, and details on how the IHS will achieve its mission through three strategic goals: (1) To ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to American Indian and Alaska Native people; (2) To promote excellence and quality through innovation of the Indian health system into an optimally performing organization; and (3) To strengthen IHS program management and operations. These strategic goals are supported by objectives that reflect the outcomes the IHS is working to achieve and strategies describe how the IHS plans to make progress toward the objectives.

Background

The IHS Strategic Plan reflects the feedback received from Tribes, Tribal organizations, urban Indian organizations, staff, and other stakeholders. The IHS used a process

similar to the HHS Strategic Plan FY 2018–2022 and gathered feedback from key partners including staff, Tribes, and urban Indian organizations. Informed by a variety of source documents, the IHS first developed a draft initial framework and initiated Tribal consultation and urban Indian confer on the draft initial framework from September 15, 2017, through October 31, 2017. During the initial framework comment period, the IHS held listening sessions, presented at Tribal meetings, and held conference calls with Tribal and urban Indian organization leaders. Comments were also accepted after October 31, 2017, on an ongoing basis.

An IHS Federal-Tribal Strategic Planning Workgroup (workgroup) reviewed the draft initial framework comments received from 150 Tribes, Tribal organizations, urban Indian organizations, and IHS staff. The workgroup suggested strategies during six meetings from November 2017 through February 2018 and made recommendations for the Draft IHS Strategic Plan FY 2018–2022, published in the FR on July 24, 2018. Workgroup membership included Tribal leaders or their designees, a representative from the IHS Office of Urban Indian Health Programs, and IHS staff from areas, service unit, and headquarters.

On July 24, 2018, the Draft IHS Strategic Plan was published in the FR for a 30-day public review and comment period. The IHS provided formal letters regarding the Draft IHS Strategic Plan release to Tribal and urban Indian organization leaders and notification of two virtual town hall sessions, one for urban confer and one for Tribal consultation on August 3 and August 6, 2018, respectively. The IHS received 123 comments, including questions, comments, and recommendations on the specific elements of the plan and other comments related to the terminology used in the IHS Strategic Plan, implementation of strategies, measures, and the IHS strategic planning process. The IHS reviewed all comments and carefully considered changes before publishing the IHS Strategic Plan FY 2019–2023.

The IHS Strategic Plan FY 2019–2023 includes minor language updates to the Vision, Goal 1, Objectives 2.2 and 3.1, and several strategies to clarify intent and adds urban Indian organizations, where appropriate. The IHS Strategic Plan timeframe is updated from FY 2018–2022 to FY 2019–2023 since the plan is being released during FY 2019. Significant changes to the IHS Strategic Plan include the following additional sections: an introduction, strategic plan development, performance, and appendices. These additional sections are in response to the comments received. Several commenters recommended addressing the unique government-to-government relationship with Tribal governments and the provision of health services based on this relationship, clarification about non-IHS participation in the development of the IHS Strategic Plan, recommendations to include measures and track progress, and to include more information about the alignment with the HHS Strategic Plan FY 2018–2022.

The text of the final IHS Strategic Plan FY 2019–2023 is available below and on the IHS Strategic Plan website at: *https://www.ihs.gov/strategicplan/.*

Indian Health Service (IHS)

IHS Strategic Plan Fiscal Year (FY) 2019–2023

INTRODUCTION

Overview

The Indian Health Service (IHS), an agency within the United States (U.S.) Department of Health and Human Services (HHS) is responsible for providing federal health services to American Indian and Alaska Native (AI/AN) people. The IHS is the principal federal health care provider and health advocate for Indian people.

Organizational Structure

The IHS organizational structure includes the Rockville, Maryland headquarters office and 12 administrative area offices located throughout the United States. The 12 IHS areas encompass a network of hospitals, clinics, and health stations.

Serving approximately 2.3 million American Indians and Alaska Natives from 573 federally recognized Tribes in 37 states, the IHS provides a wide range of clinical and public health services, along with community and facilities infrastructure services. Comprehensive primary health care and disease prevention services are provided through a network of hospitals, clinics, and health stations on or near Indian reservations. These facilities, which are managed by the IHS, Tribes, and Tribal organizations, are predominately located in rural and primary care settings. In addition, the IHS contracts with urban Indian organizations (UIOs) for health care services provided in some urban centers. The Indian health care system strives to provide comprehensive care through a network of IHS, Tribal, and urban health facilities and by purchasing health care services from non-IHS providers through the Purchased/Referred Care (PRC) program.

In 2017, the Indian health care system had more than 39,367 hospital admissions and almost 13.8 million outpatient medical care visits. The Indian health care system also provides dental services, nutrition services, pharmacy services, community health, sanitation facilities (water supply and waste disposal), injury prevention, and institutional environmental services.

A unique government-to-government relationship exists between Indian Tribes and the U.S. Government. Consistent with the government-to-government relationship and its statutory authorities, the IHS is committed to ensuring that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/AN people. Over 60 percent of the IHS appropriation is administered by Tribes,[1] primarily through Self-Determination contracts or Self-Governance compacts. The IHS retains the remaining funds and delivers health services directly to the Tribes that choose to have IHS administer the programs. The IHS works closely with Tribal governments as they assume a greater role in improving health care in their own communities.

Tribal Consultation and Urban Indian Confer

IHS implements Tribal consultation [2] and urban Indian confer [3] policies to facilitate the involvement of Tribes and UIOs.

The IHS Tribal consultation policy states that consultation occurs to the extent practicable and permitted by law before any action is taken that will significantly affect Indian Tribes. The IHS is committed to regular and meaningful consultation and collaboration with Tribes. It is IHS policy to confer with UIOs, to the maximum extent practicable, whenever a critical event or issue arises, as defined in the policy, in implementing or carrying out the Indian Health Care Improvement Act (IHCIA). This policy is used to ensure that the health needs of the urban Indian population are considered at the local, area, and national levels when implementing and carrying out the IHCIA.

IHS Partnerships

The IHS has established partnerships to address AI/AN issues and strengthen services. Partnerships include local

[1] IHS Profile: *https://www.ihs.gov/newsroom/factsheets/ihsprofile/.*

[2] 25 U.S.C § 1602 (5); 25 U.S.C 5301; 25 U.S.C § 5381.

[3] 25 U.S.C § 1660d(b); 25 U.S.C § 1602 (5); 25 U.S.C § 1631 (f); 25 U.S.C § 1665k(a)(2)(A)(vii).

communities, not-for-profit organizations, universities and schools, foundations, businesses, and federal agencies such as the Department of the Interior (including the Bureau of Indian Affairs and the Bureau of Indian Education), Department of Justice, Department of Housing and Urban Development, and the Department of Veterans Affairs. These IHS partnerships impact AI/AN communities in critical areas, such as housing, education, public safety, and health care for Veterans. It is essential to continue to build upon these partnerships.

Strategic Plan Development

To develop the IHS Strategic Plan FY 2019–2023, the IHS used a process similar to the HHS Strategic Plan FY 2018–2022,[4] including the use of goals, objectives and strategies, environmental scans, Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis, and workgroup participation.

An IHS-initiated environmental scan reviewed strategic plans of several IHS area and headquarters offices, and other available documents. The SWOT exercise was conducted with IHS executive staff. Informed by these documents and analysis, the IHS developed an initial framework for review and comment of the Strategic Plan by Tribes, Tribal organizations, UIOs, and IHS staff. The IHS first initiated Tribal consultation and urban Indian confer on the IHS Strategic Plan initial framework on September 15, 2017, and formed an IHS Federal-Tribal Strategic Planning Workgroup (workgroup) to review all comments and recommend a list of final goals and objectives for IHS leadership review and approval.

During the initial framework comment period (September 15, 2017–October 31, 2017), the IHS held listening sessions, presented at Tribal meetings, and held conference calls with Tribal and UIO leaders. Workgroup membership included Tribal leaders or their designees, a representative from the IHS Office of Urban Indian Health Programs, and IHS staff from areas, service units, and headquarters. The workgroup reviewed comments on the initial framework received from 150 Tribes, Tribal organizations, UIOs, and IHS staff. Subsequently, the workgroup met six times over a four-month period to develop their final recommendations on the IHS mission, vision, goals, objectives, and strategies.

The workgroup prioritized strategies by importance, and not all strategies were recommended. Quality as a Business Strategy (QBS)[5] was used as a model for developing the IHS Strategic Plan. Strategies were developed in alignment with defined goals and objectives to continue current operations or improve the Indian health care system. In doing so, the IHS Strategic Plan addresses quality throughout all aspects of its clinical, operational, and administrative operations and creates a plan for improvement across all three areas.

Feedback received from all stakeholders formed the basis of the Draft IHS Strategic Plan 2018–2022 sent out for public comment on July 24, 2018. During the 30-day comment period, which ended on August 23, 2018, the IHS received comments from 30 entities, including Tribes, Tribal organizations, UIOs, IHS staff, and national organizations. The final IHS Strategic Plan FY 2019–2023 reflects changes made to the initial framework based on consideration of all comments received. The IHS Strategic Plan FY 2019–2023 may be accessed through the IHS website at *https://www.ihs.gov/strategicplan/.*

The IHS intends to identify appropriate performance measures and outcomes to achieve the mission and goals. The IHS is working to develop an implementation process that will include measures to address the strategies and objectives in the IHS Strategic Plan. The IHS will review periodically the agency's progress in implementation of the IHS Strategic Plan and will provide updates to IHS staff and to Tribal and UIO leaders.

Priorities and Challenges

The IHS has historically established four priorities to guide operations. The IHS Strategic Plan FY 2019–2023 incorporates these priorities and builds on the important work being done throughout the system.

The IHS four priorities are interrelated with the strategic goals of the IHS Strategic Plan FY 2019–2023:

- People—Recruit, develop, and retain a dedicated, competent, caring workforce collaborating to achieve the IHS mission.
- Partnerships—Build, strengthen, and sustain collaborative relationships that advance the IHS mission.
- Quality—Excellence in everything we do to assure a high-performing Indian health system.
- Resources—Secure and effectively manage the assets needed to promote the IHS mission.

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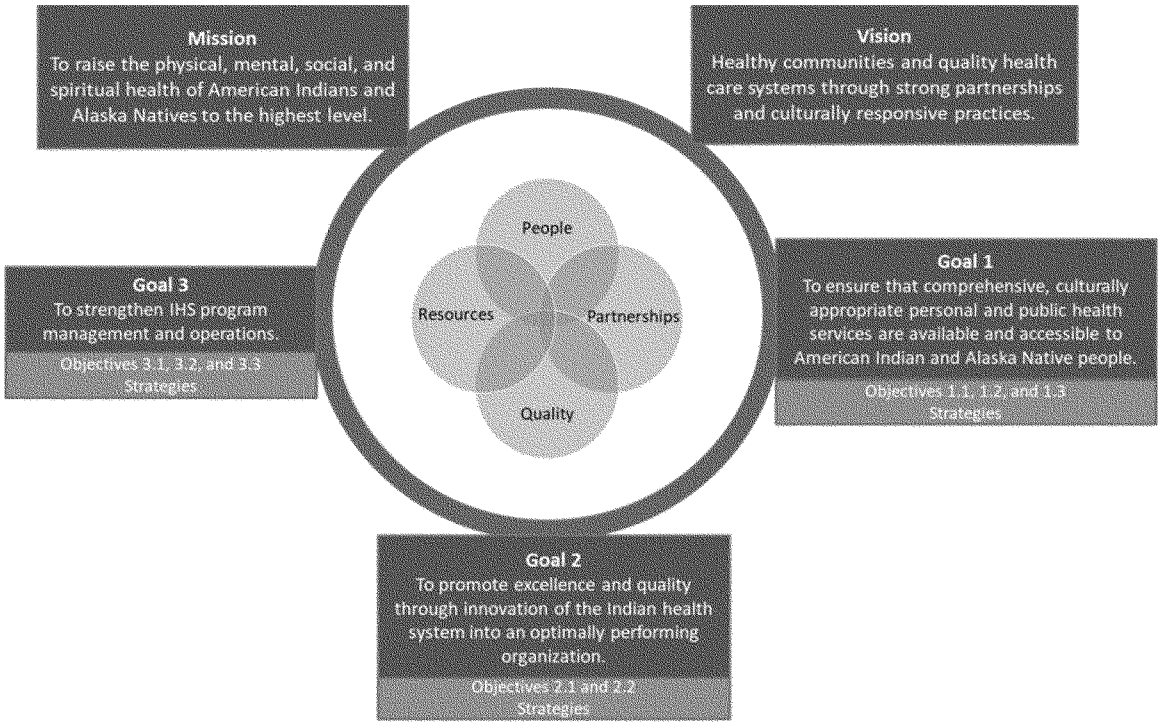
[4] A crosswalk of the HHS Strategic Plan FY 2018–2022 and IHS Strategic Plan FY 2019–2023 goals and objectives is available in Appendix A.

[5] QBS is a leadership framework and set of activities to help organizations prepare to participate in system transformation and continuous quality improvement. QBS guides strategic planning through a vision of the system that operates in its present condition (maintaining operations that achieve goals and objectives) and improves to meet new needs through redesign of existing conditions or design of new processes, products, or services. QBS helps leaders plan to operate the system and plan to improve the system.

Figure 1. The IHS Strategic Plan and the IHS Four Priorities



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The AI/AN population continues to face health disparities in comparison to the national population. Over the past two decades, there have been some important health improvements, such as reduced mortality rates from tuberculosis and heart disease, among others. However, the infant mortality rate for AI/ANs is 26 percent higher than the national rate,[6] and AI/ANs are three times as likely as the overall population to have diabetes.[7] American Indian and Alaska Native populations also have disproportionately high rates of suicide, unintentional injuries, and drug overdose deaths. The IHS Strategic Plan aims to strengthen the overall health status of the AI/AN population.

In recent years, the agency has faced challenges related to access to care, quality of care, and program management and operations. The IHS Strategic Plan includes three strategic goals focused on access, quality, and management and operations.

Access: Many facilities operated by the IHS and Tribes are located in rural or remote settings and may be unable to provide comprehensive health care services and/or acute and specialty care services. To help meet the health care needs, the PRC program purchases services from private health care providers for eligible patients. Although PRC funding may meet the full patient need in some IHS areas, funding may not be sufficient to meet the need in others. Some facilities also face longstanding challenges in recruiting and retaining essential staff, ensuring access to needed care and training resources, and maintaining clinical proficiency of professional staff. Recruitment and retention challenges are attributable to a variety of factors that include, but are not limited to, the remoteness of some IHS facilities, rural reservation communities, aging IHS facilities and medical equipment, housing shortages, limited access to schools and basic amenities, limited spousal employment opportunities, and competition with higher paying public and private health care systems. The IHS Strategic Plan Goal 1 aims to address some of these challenges.

Quality: Assuring that IHS hospitals and clinics are accredited is a high priority for IHS. Meeting Medicare standards also allows IHS facilities to be reimbursed for all eligible Medicare and Medicaid services. The IHS monitors federal hospitals through area offices, which have access to information about the quality of care and oversight through a governing body process. Staffing and funding shortages at area offices also have an impact on the clinical support and guidance provided to service units. The IHS is working to strengthen organizational capacity to improve our ability to meet and maintain accreditation of IHS direct service facilities, align service delivery processes to improve the patient experience, ensure patient safety, establish agency-wide patient wait time standards, and improve processes and strengthen communication for early identification of risks.

Within the Indian health care system, quality is also impacted by rising costs from medical inflation, population growth, increased rates of chronic diseases, and aging facilities and equipment. These challenges may be heightened at facilities located in rural,

[6] U.S. Department of Health and Human Services, IHS. (2014). *Trends in Indian Health: 2014 Edition.* Retrieved from: *https://www.ihs.gov/dps/publications/trends2014/.*

[7] Data comparing the AI/AN population to the U.S. general population are documented and updated annually by the IHS. As of April 2018, the most current IHS mortality data available is from 2009–2011. AI/AN mortality data accounts for misclassification of AI/ANs on death certificates and there is a time lag in producing IHS mortality data.

remote locations. The Indian health care system is also challenged with balancing the needs of patients served in IHS, Tribal, and UIO health programs. Goal 2 aims to address these challenges.

Management and Operations: The Indian health care system continues to face management and operational challenges in the years ahead. Communication and collaboration across the system requires improvement and managers need tools and resources to make data-driven decisions. Additionally, while some AI/AN communities have modern IHS hospitals and ambulatory facilities, the average age of IHS facilities is 36 years. Many IHS and Tribal health care facilities and UIOs are operating at or beyond capacity, and their designs may not be efficient in the context of modern health care delivery. Information Technology also continues to be a major concern with rising costs and increased security threats. Goal 3 aims to address these challenges.

Performance

The IHS currently reports agency-wide performance measures. Existing performance measures may be used to monitor progress on goals and objectives included in the IHS Strategic Plan FY 2019–2023. Additional measures for specific objectives or strategies may be developed as the agency moves forward with implementation of the IHS Strategic Plan.

The IHS is working to develop an implementation process based on the feedback received during the open comment period and based on action recommendations received during the 2018 National Combined Councils Annual Meeting.[8] Updates on the agency's progress in implementation of the IHS Strategic Plan will be made available at the IHS Strategic Plan website.

Government Performance and Results Act (GPRA) and GPRA Modernization Act (GPRAMA): For IHS, performance improvement is a concerted effort by all members of the Indian health care system working together to improve a comprehensive set of existing GPRA and GPRAMA performance measures. Although not required by law, some tribally managed health programs voluntarily submit performance data for participation in GPRA/GPRAMA performance reporting. All UIOs report on all GPRA/GPRAMA measures. The IHS performance measures are focused on monitoring population health and assessing program trends and management. The measures support the IHS's strategic goals and improvement of AI/AN health outcomes. See Appendix B: GPRA/GPRAMA Measures and IHS Strategic Plan Crosswalk. Progress on performance measures is tracked annually and reported in the IHS Congressional Justification and on the IHS Quality website. GPRAMA measures are also reported in the HHS Annual Performance Plan and Report. The GPRA and other National Reporting website includes additional information about the GPRA and other clinical care performance measures.

National Accountability Dashboard for Quality (NAD–Q): The IHS gathers and reports data on key quality measures to ensure compliance with IHS policy requirements, accreditation standards, and/or federal regulations at IHS hospitals and ambulatory health centers. Reports are generated on a quarterly basis and available at the IHS Quality website. The NAD–Q supports the agency's strategic goals and improvement of AI/AN health outcomes. See Appendix C: National Accountability Dashboard for Quality and IHS Strategic Plan Crosswalk.

Other: The IHS cascades performance goals and objectives and performance-related metrics agency-wide. Agency leadership periodically reviews progress in meeting these agency performance objectives, holding regular discussions with senior executives to identify challenges to success and determine feasible solutions. The connection between performance objectives, performance measures, and employee accountability enables agency leadership to direct the efforts of the workforce more accurately, and to make more informed and effective decisions. The impact is greater success in meeting the full array of mission requirements.

IHS Strategic Plan FY 2019–2023

The IHS Strategic Plan FY 2019–2023 details how the IHS will achieve its mission through three strategic goals. Each goal is supported by objectives and strategies. The strategies are activities to make progress on the stated objectives. The goals and objectives are inter-related and success in one area may overlap and influence successes in other areas. Multiple sectors across the Indian health care system may contribute to the successful achievement of a goal or objective.

Mission

To raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level.

Vision

Healthy communities and quality health care systems through strong partnerships and culturally responsive practices.

Goal 1: To ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to American Indian and Alaska Native people.

Goal Explanation: The IHS provides comprehensive primary health care and public health services, which are critical to improving the health of AI/AN people. The Indian health care system delivers care through health care services provided in IHS, Tribal, and Urban (I/T/U) health facilities (*e.g.,* hospitals and clinics) and by supporting the purchase of essential health care services not available in IHS and Tribal health care facilities, known as the Purchased/Referred Care (PRC) program. Additional services include environmental health improvements, as well as traditional healing practices and services to complement the medical, dental, pharmacy, laboratory, behavioral health, and other primary care medical programs. Expanding access to these services in AI/AN communities is essential to improving the health status of the AI/AN population. This goal includes securing the needed workforce, strengthening collaboration with a range of public and private organizations, as well as Tribal, and urban Indian providers, and expanding access to quality health care services to promote the health needs of AI/AN communities.

Objective 1.1: Recruit, develop, and retain a dedicated, competent, and caring workforce.

Objective Explanation: Consistent, skilled, and well-trained leadership is essential to recruiting and retaining well-qualified health care professionals and administrative professionals. Attracting, developing, and retaining needed staff will require streamlining hiring practices and other resources that optimize health care outcomes. Within the Indian health care system, staff development through orientation, job experience, mentoring, and short- and long-term training and education opportunities are essential for maintaining and expanding quality services and maintaining accreditation of facilities. Also, continuing education

[8] The 2018 National Combined Councils Annual Meeting was held in Portland, Oregon, on August 14–17, 2018. During the meeting, breakout sessions were held by the IHS to develop action plans for implementation of the objectives in the Draft IHS Strategic Plan. For more information about the meeting, please visit: *https://www.ihs.gov/forproviders/ncc/2018meeting/*. The action plans presented during the meeting are subject to the review and recommendations of IHS senior leadership.

and training opportunities are necessary to increase the skill sets and knowledge of employees, which enables them to keep pace in rapidly evolving areas of medical science, prevention science, improvement science, and information technology, as well as to increase opportunities for employee career advancement and/or to maintain necessary professional credentialing and accreditation.

Strategies—The following strategies support this objective:

Health Care Recruitment and Retention:

1. Improve and innovate a process that increases recruitment and retention of talented, motivated, culturally knowledgeable, and competent workers, including through partnerships with AI/AN communities and others.

2. Continue and expand the utilization of the IHS and Health Resources and Services Administration's National Health Service Corps scholarship and loan repayment programs, as authorized by law, to increase health care providers at I/T/U facilities.

3. Support IHS sponsorship of fellowship slots in certain specialized leadership programs for recruitment of future clinical and administrative leaders.

4. Evaluate new organizational structure options and reporting relationships to improve oversight of the Indian Health Professions program.

5. Expand the use of paraprofessionals, Advanced Practice Nurses, and Physician Assistants to increase the workforce and provide needed services.

6. Develop training programs in partnership with health professional schools and training hospitals and expand opportunities to educate and mentor AI/AN youth interested in obtaining health science degrees.

7. Enhance and streamline IHS human resources infrastructure to hire well-qualified personnel.

Staff Capacity Building:

8. Strengthen the workforce to improve access to, and quality of, services.

9. Improve leadership skills, adopt a consistent leadership model, and develop mentoring programs.

10. Improve continuity processes and knowledge sharing of critical employee, administrative, and operational functions through written communications and documentation within the IHS.

11. Improve workplace organizational climate with staff development addressing teamwork, communication, and equity.

12. Strengthen employee performance and responsiveness to IHS, Tribes, urban Indian organizations (UIOs), and patients by improving employee orientation and opportunities for training, Graduate Medical Education programs, and other educational offerings, including customer service skills and cultural competency.

Objective 1.2: Build, strengthen, and sustain collaborative relationships.

Objective Explanation: Collaboration fostered through an environment that values partnership is vital to expanding the types of services to improve population health outcomes that can be achieved within the Indian health care system. These relationships include those between Tribes, UIOs, states, communities, federal agencies, not-for-profit organizations, universities/schools, foundations, private industry, as well as internal cooperation within the agency and collaborative project management.

Strategies—The following strategies support this objective:

Enhancing Collaboration:

1. Collaborate with Tribes and UIOs in the development of community-based health programs, including health promotion and disease prevention programs and interventions that will increase access to quality health programs.

2. Develop a community feedback system/program where community members can provide suggestions regarding services required and received.

3. Support cross-collaboration and partnerships among I/T/U stakeholders.

Service Expansion:

4. Promote collaborations among the IHS, federal agencies, Tribes, Tribal organizations, UIOs, and states to expand services, streamline functions and funding, and advance health care goals and initiatives.

5. Work with community partners to develop new programs responsive to local needs.

Objective 1.3: Increase access to quality health care services.

Objective Explanation: Expanded access to health care services, including individual and community health services, requires using many approaches. Greater access is critical to improving the health of AI/AN people and reducing risk factors contributing to the leading causes of death. Among the needs identified are increased prevention, specialty care, innovative use of health care providers, traditional medicine, long-term and aftercare services (which may require advancing holistic and culturally centered population health models), and expanded facilities and locations. To assess the success of these efforts, measures are needed to evaluate provider productivity, patient satisfaction, and align improvements in support operations (*e.g.,* human resources, contracting, technology) to optimize access to quality health care services.

Strategies—The following strategies support this objective:

Health Care Service Access Expansion:

1. Develop and support a system to increase access to preventive care services and quality health care in Indian Country.

2. Develop and expand programs in locations where AI/AN people have no access to quality health care services.

3. Overcome or mitigate challenges and enhance partnerships across programs and agencies by identifying, prioritizing, and reducing access limitations to health care for local AI/AN stakeholders.

4. Increase access to quality community, direct, specialty, long-term care and support services, and referred health care services and identify barriers to care for AI/AN communities.

5. Leverage technologies such as telemedicine and asynchronous electronic consultation systems to include a more diverse array of specialties and to expand, standardize, and increase access to health care through telemedicine.

6. Improve team effectiveness in the care setting to optimize patient flow and efficiency of care delivery.

7. Reduce health disparities in the AI/AN population.

8. Provide evidence-based specialty and preventive care that reduces the incidence of the leading causes of death for the AI/AN population.

9. Incorporate traditional cultural practices in existing health and wellness programs.

10. Improve the ability to account for complexity of care for each patient to gauge provider productivity more accurately.

11. Hold staff and management accountable to outcomes and customer service through satisfaction surveys.

12. In consultation with Tribes, modernize health care facilities and staff quarters to expand access to quality health care services.

13. In consultation with Tribes, review and incorporate a resource allocation structure to ensure equity among Tribes.

14. Develop and coordinate environmental engineering, environmental health, and health facilities engineering services to provide

effective and efficient public health services and enable response, recovery, and mitigation to disasters and public health emergencies.

Goal 2: To promote excellence and quality through innovation of the Indian health system into an optimally performing organization.

Goal Explanation: In pursuit of high reliability health care services [9] and care that is free from harm, the IHS has implemented several innovations in health care delivery to advance the population health needs of AI/AN communities. In many cases, innovations are developed to meet health care needs at the local level and subsequently adopted across the Indian health system, as appropriate. The IHS will continue to promote excellence and quality through innovation by building upon existing quality initiatives and integrating appropriate clinical and public health best practices. Recent IHS efforts have been aimed at strengthening the underlying quality foundation of federally operated facilities, standardizing processes, and sharing health care best practices with federal, state, Tribal, and urban Indian programs.

Objective 2.1: Create quality improvement capability at all levels of the organization.

Objective Explanation: Ensure that quality improvement is operational in all direct care, public health, administrative, and management services throughout the system. Quality improvement will be achieved at all levels of the organization, including headquarters, area offices, and service units. Quality improvement methods will be made available to Tribes, Tribal organizations, and UIOs, as requested. Creating quality improvement capability at all levels will require training, resources, commitment, and consistency to assure that every employee shares a role in quality improvement in all IHS operations and services. This objective will build upon efforts of the 2016–2017 IHS Quality Framework [10] to strengthen quality improvement related to data, training, and standards of care.

Strategies—The following strategies support this objective:

Quality Data:

1. Improve the transparency and the quality of data collected regarding health care services and program outcomes.

2. Develop and integrate quality standards and metrics into governance, management, and operations.

3. Standardize quality metrics across the IHS and use results to identify emerging needs, share information on best practices and performance trends.

Quality Improvement:

4. Provide training, coaching, and mentoring to ensure quality improvement and accountability of staff at all levels of the organization.

5. Evaluate training efforts and staff implementation of improvements, as appropriate.

Standards of Care:

6. Develop and provide standards of care to improve quality and efficiency of health services across the IHS.

7. Adopt the Model for Improvement in all clinical, public health, and administrative activities across the IHS.

8. Adopt patient-centered models of care, including patient-centered medical home recognition and care integration.

Objective 2.2: Provide care to better meet the health care needs of American Indian and Alaska Native communities.

Objective Explanation: Key to improving health outcomes and sustaining population health is culturally responsive health care that is patient-centered and community supported. The IHS will implement culturally appropriate and effective clinical and public health tools to improve the health care needs of AI/AN communities. This objective reinforces current efforts addressing culturally appropriate care and supports dissemination of best practices.

Strategies—The following strategies support this objective:

Culturally Appropriate Care:

1. Strengthen culturally competent organizational efforts and reinforce implementation of culturally appropriate and effective care models and programs.

2. Promote and evaluate excellence and quality of care through innovative, culturally appropriate programs.

3. Promote total health integration within a continuum of care that integrates acute, primary, behavioral, and preventive health care.

4. Explore environmental and social determinants of health and trauma-informed care in health care delivery.

5. Continue to develop and implement trauma-informed care models and programs.

Sharing Best Practices:

6. Work collaboratively within the IHS, and among federal, state, Tribal, and urban Indian programs to improve health care by sharing best practices.

Goal 3: To strengthen IHS program management and operations.

Goal Explanation: This goal addresses issues of management, accountability, communication, and modernized information systems. The IHS is committed to the principles of improved internal and external communication, and sound management. Assuring the availability and ongoing development of a comprehensive information technology (IT) system is essential to improving access to integrated clinical, administrative, and financial data to support individual patient care, and decision-making.

Objective 3.1: Improve communication within the organization with Tribes, Urban Indian Organizations, and other stakeholders, and with the general public.

Objective Explanation: This objective addresses the critical need to improve communication throughout the IHS, with employees and patients, with Tribes, UIOs, with the many organizations working with the IHS and with the general public. Most important is to assist Tribes, UIOs, and the IHS in better understanding Tribal and urban Indian needs and IHS program needs, to encourage full participation in information exchange, and to engage Tribes and urban Indian programs in partnerships and building coalitions. This includes defining and characterizing community and health-specific program needs, modifying programs as needed, and monitoring the effectiveness of programs and program modifications.

Strategies—The following strategies support this objective:

Communication Improvements:

1. Improve communication and transparency among all employees, managers, and senior leadership.

2. Develop and define proactive communication plans for internal and external stakeholders.

3. Enhance health-related outreach and education activities to patients and families.

4. Design social media platforms that will ensure wide dissemination of information to interested and affected individuals and organizations.

Strengthen Partnerships:

5. Assure quality reporting relationships between service units, area

[9] High reliability health care means consistent excellence in quality and safety for every patient, every time. High reliability in health care improves: Organizational effectiveness, efficiency, culture, customer satisfaction, compliance, and documentation. Additional information about High Reliability Organizations is available online at *https://psnet.ahrq.gov/primers/primer/31/high-reliability*.

[10] The IHS Quality Framework 2016–2017 is available online at *https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/IHS_2016–2017_QualityFramework.PDF*. The IHS Strategic Plan 2019–2023 is a longer-range plan and replaces the short-term IHS Quality Framework.

offices, and headquarters are clearly defined and implemented.

6. Effectively collaborate with other IHS offices (*e.g.,* the IHS Loan Repayment Program) and HHS staff and operating divisions where missions, goals, and authorities overlap.

Objective 3.2: Secure and effectively manage the assets and resources.

Objective Explanation: This objective supports the delivery of health care through improved management of all types of assets and non-workforce resources. To elevate the health status of the AI/AN population and increase access to medical care, the IHS must continue to help ensure patients understand their health care options and improve health care system business processes and efficiencies. The IHS will also increase the effectiveness of operations and reporting, while providing more assistance and infrastructure support to IHS areas and facilities.

Strategies—The following strategies support this objective:

Infrastructure, Capacity, and Sustainability:

1. Enhance transparency of IHS management and accountability infrastructure to properly manage and secure assets.

2. Promote collaboration among federal, state, Tribes, and local health programs to develop the necessary health care and public health infrastructure to effectively provide essential public health services.

3. Provide technical assistance to strengthen the capacity of service units and area offices to enhance effective management and oversight.

4. Apply economic principles and methods to assure ongoing security and sustainability of federal, Tribal and urban Indian facilities.

Improved Business Process:

5. Routinely review management operations to effectively improve key business management practices.

6. Optimize business functions to ensure that the IHS is engaged in discussions on value-based purchasing.

7. Develop policies, use tools, and apply models that ensure efficient use of assets and resources.

8. Strengthen management and operations through effective oversight.

9. Develop standardized management strategies for grants, contracts, and other funding opportunities to promote innovation and excellence in operations and outcomes.

Patient Education and Resources:

10. Strengthen patient awareness of their health care options, including Medicaid and Medicare enrollment, which may increase access to health care and optimize third-party reimbursements.

Objective 3.3: Modernize information technology and information systems to support data driven decisions.

Objective Explanation: This objective is to assure the availability and ongoing improvement of a comprehensive IT system that meets the needs of providers, patients, and I/T/Us by using technology to provide improved, timely access to care and to reduce the need for transit. This objective recognizes that qualified and capable IT staff and leadership are fundamental to achieving the strategies listed below and further reinforce the workforce objectives outlined elsewhere in the IHS Strategic Plan.

An improved Indian health IT network fosters transparency, integration, and access to the clinical, administrative, and financial data necessary to support patient care, decision-making, and advocacy. This will require the development of a system integrated with Tribal and urban Indian programs that will address the current and projected clinical, administrative, and fiscal data needs. Timely fiscal data dissemination to all federal partners when developing budgets is necessary to accurately address health care needs of AI/AN communities. Data quality (*i.e.,* accuracy, reliability, and validity) and quality patient care will continue to play a highly visible role both within and outside the IHS. Data quality is only partially dependent upon technology. Improved data quality also reflects other sustained initiatives, such as data entry accuracy, legibility of handwriting, appropriate and timely data exports, and coding accuracy.

Strategies—The following strategies support this objective:

Health Information Technology (HIT):

1. Evaluate electronic health record needs of the IHS and the ability for the health information systems to meet those needs, create seamless data linkages, and meet data access needs for I/T/U health information systems.

2. Develop a consistent, robust, stable, secure, state-of-the-art HIT system to support clinician workflow, improve data collection, increase transparency, and provide regular and ongoing data analysis.

3. Modernize the HIT system for IHS Resource and Patient Management System or commercial off-the-shelf packages.

4. Align with universal patient record systems to link off-reservation care systems that serve American Indians and Alaska Natives.

5. Enhance and expand technology such as the IHS telecommunications to provide access for consultative care, stabilization of care, decreased transportation, and timeliness of care at any IHS-funded health program.

Data Process:

6. Provide available data to inform I/T/U decision-making.

7. Act upon performance data and standardize data and reporting requirements.

8. Assure system of data sharing to solidify partnerships with Tribal and urban Epidemiology Centers and other Tribal programs and UIOs.

9. Establish capability for data federation [11] so that data analytics/business intelligence may be applied to disparate data stored in a single, general-purpose database that can hold many types of data and distribute that data to users anywhere on the network.

Note : The intent of the IHS Strategic Plan is to improve the health of American Indians and Alaska Natives through better management and administration of the IHS. It is not intended to replace or create any right, benefit, or legal responsibility, substantive or procedural, enforceable by law by a party against the U.S., its agencies, or any person.

BILLING CODE 4610–16–P

[11] Data federation provides an organization with the ability to aggregate data from disparate sources in a virtual database so it can be used for business intelligence or other analysis.

APPENDIX A: HHS STRATEGIC PLAN AND IHS STRATEGIC PLAN CROSSWALK

The table below is a crosswalk of the IHS Strategic Plan and the HHS Strategic Plan FY 2018-2022. The HHS Strategic Plan Goals and Objectives are listed on the left side of the table and the IHS Strategic Plan Goals and Objectives are listed in the right columns. The upper case "X" represents where the IHS is listed as a contributing agency to the HHS Strategic Plan FY 2018-2022. Other goals and objectives specifically apply to other federal agencies. The crosswalk shows places where the HHS Strategic Plan aligns with the IHS Strategic Plan. The lower case "x" indicates the HHS objective aligns with the IHS objective(s). The asterisk (*) indicates the IHS has activities that may indirectly support the HHS objective(s).

HHS Strategic Plan FY 2018-2022	IHS	IHS Goals							
		Goal 1			Goal 2		Goal 3		
		Objectives							
		1.1	1.2	1.3	2.1	2.2	3.1	3.2	3.3
Goal 1: Reform, Strengthen, and Modernize the Nation's Healthcare System	X	**IHS Goals 1 & 2**							
1.1 Promote affordable healthcare, while balancing spending on premiums, deductibles, and out-of-pocket costs								*	
1.2 Expand safe, high-quality healthcare options, and encourage innovation and competition			x		x	x			
1.3 Improve Americans' access to healthcare and expand choices of care and service options	X			x					
1.4 Strengthen and expand the healthcare workforce to meet America's diverse needs	X	x							
Goal 2: Protect the Health of Americans Where They Live, Learn, Work, and Play	X	**IHS Goals 1, 2, & 3**							
2.1 Empower people to make informed choices for healthier living	X					x	x		
2.2 Prevent, treat, and control communicable diseases and chronic conditions	X			x		x			
2.3 Reduce the impact of mental and substance use disorders through prevention, early intervention, treatment, and recovery support	X			x		x			
2.4 Prepare for and respond to public health emergencies	X			x		x			
Goal 3: Strengthen the Economic and Social Well-Being of Americans across the Lifespan	X	**IHS Goals 1 & 2**							
3.1 Encourage self-sufficiency and personal responsibility, and eliminate barriers to economic opportunity						*			
3.2 Safeguard the public against preventable injuries and violence or their results	X			x		x			
3.3 Support strong families and healthy marriage, and prepare children and youth for healthy, productive lives	X			x		x			
3.4 Maximize the independence, well-being, and health of older adults, people with disabilities, and their families and caregivers	X			x		x			
Goal 4: Foster Sound, Sustained Advances in the Sciences		**IHS Goals 1 & 3**							
4.1 Improve surveillance, epidemiology, and laboratory services			x						x
4.2 Expand the capacity of the scientific workforce and infrastructure to support innovative research		*							
4.3 Advance basic science knowledge and conduct applied prevention and treatment research to improve health and development				*					
4.4 Leverage translational research, dissemination and implementation science, and evaluation investments to support adoption of evidence-informed practices				*					
Goal 5: Promote Effective and Efficient Management and Stewardship	X	**IHS Goals 1 & 3**							
5.1 Ensure responsible financial management	X							x	
5.2 Manage human capital to achieve the HHS mission	X	x						x	
5.3 Optimize information technology investments to improve process efficiency and enable innovation to advance program mission goals	X								x
5.4 Protect the safety and integrity of our human, physical, and digital assets	X							x	

APPENDIX B: GPRA/GPRAMA MEASURES AND IHS STRATEGIC PLAN CROSSWALK

The IHS reports the measures listed in the table below are consistent with the requirements of the GPRA and GPRAMA. IHS GPRA/GPRAMA measures include clinical care performance measures, such as care for patients with diabetes, dental, cancer screening, immunization, behavioral health screening and other prevention measures. The IHS also reports many non-clinical measures, including rates of hospital accreditation, injury prevention, and infrastructure improvements. GPRA/GPRAMA data is reported for IHS facilities, participating Tribal facilities, and UIOs. The crosswalk table below shows the IHS GPRA/GPRAMA performance measures in the left column and the IHS Strategic Plan goals and objectives are listed in the right columns. The upper case "X" indicates the performance measure aligns to the IHS objective.

AGENCY PERFORMANCE MEASURES *(Measure ID – Measure)*	**IHS Goals**							
	Goal 1			**Goal 2**		**Goal 3**		
	Objectives							
	1.1	**1.2**	**1.3**	**2.1**	**2.2**	**3.1**	**3.2**	**3.3**
42 – Health Professions scholars placed in 90 days	X							
IHP-1 - Number of scholarship awards under Section 103	X							
IHP-2 - Number of scholarship awards under Section 104	X							
IHP-3 - Number of Externs under Section 105	X							
IHP-4 - Number of new 2-year contracts awarded loan repayments under Section 108	X							
IHP-5 - Number of continuing 1 year loan repayment contract extensions under Section 108	X							
IHP-6 - Total number of continuation awards funded in previous fiscal year under Section 108	X							
CHR-1 - Number of patient contacts	X							
CHR-2 - Community Health Representative (CHR) patient contacts for Chronic Disease Services	X							
CHR-3 - Number of CHRs trained			X					
10 - Youth Regional Treatment Centers (YRTC) Accreditation			X					
20 - Accreditation (federal sites)			X					
23 - Public Health Nursing Activities			X					
28 - Unintentional Injury Mortality			X					
29 - Suicide surveillance [# of forms completed]			X					
35 - Number of new and like-new and existing homes provided with sanitation facilities			X					
36 - Health Care Facilities Construction (HCFC) Projects completed			X					
44 - Years of Potential Life Lost (YPLL)			X					
45 - Hospital admissions per 100,000 service population: long-term complications of diabetes			X					
52 - Diabetes: Good Glycemic Control			X					
53 - Diabetes: Controlled Blood Pressure <140/90			X					
54 - Diabetes: Statin Therapy			X					
55 - Diabetes: Nephropathy Assessed			X					
56 - Diabetes: Retinopathy Exam			X					
57 - Pap Smear Rates			X					
58 - Mammogram Rates - Retire after 2018 and replace with a new measure			X					
59 - Colorectal Cancer Screening			X					
61 - Topical Fluoride-Patients			X					
62 - Access to Dental Services			X					
63 - Dental Sealants			X					
65 - Depression Screening 18 years and older			X					
66 - Childhood Immunizations			X					
67 - Influenza vaccination rates among children 6 months to 17 years			X					
68 - Influenza vaccination rates among adults 18 years and older			X					
69 - Adult Composite Immunization			X					
70 - Statin Therapy for the Prevention and Treatment of Cardiovascular Disease			X					
71 - Childhood Weight Control			X					

AGENCY PERFORMANCE MEASURES *(Measure ID – Measure)*	**IHS Goals**							
	Goal 1			**Goal 2**		**Goal 3**		
	Objectives							
	1.1	**1.2**	**1.3**	**2.1**	**2.2**	**3.1**	**3.2**	**3.3**
72 - Tobacco Cessation			X					
73 - HIV Screening Ever			X					
75 - Controlling High Blood Pressure-Million Hearts			X					
80 - Universal Alcohol Screening			X					
81 - Intimate Partner Violence/Domestic Violence (IPV/DV) Screening			X					
82 - Screening, Brief Intervention, and Referral to Treatment (SBIRT)			X					
85 - Depression Screening 12-17 year olds			X					
86 - Diabetes: Poor Glycemic Control >9%			X					
87 - Mammogram Rates - Baseline in 2019			X					
AK-1 - Chronic Hepatitis B Patients Screened/Targeted			X					
AK-2 - Chronic Hepatitis C Patients Screened/Targeted			X					
AK-3 - Other Liver Disease Patients Screened/Targeted			X					
AK-4 - Hepatitis A vaccination			X					
AK-5 - Hepatitis B vaccination			X					
EHS-3 - Injury Intervention: Occupant protection restraint use (Seat Belts)			X					
EPI-4 - Number of requests for technical assistance including data requests for Tribal/Urban (T/U) organization, communities, or AI/AN individuals responded to			X					
EPI-5 - Number of Tribal Epidemiology Centers (TEC)-sponsored trainings and technical assistance provided to build tribal public health capacity			X					
Health Care Facilities Construction - Efficiency (HCFC-E) - HCFC Leadership in Energy and Environmental Design (LEED) certified IHS health care facilities			X					
HE-1 - Number of visits with Health/Patient Education			X					
PRC-2 - Track IHS referrals			X					
PRC-3 - Track self-referrals			X					
SFC-E - Sanitation Facilities Construction (SFC) Average project duration			X					
TMG-1 - Planning Grants			X					
TMG-2 - Health Management Structure (HMS) grants			X					
UIHP-10 - UIHP Controlled Blood Pressure			X					
UIHP-11 - UIHP Poor Glycemic Control			X					
UIHP-7 - UIHP Number of AI/AN served			X					
UIHP-8 - UIHP Good Glycemic Control			X					
UIHP-9 - UIHP Childhood Weight Control			X					
HIT-1 - OMB IT Dashboard--All IHS Major Investments will maintain a score of 4/5 or greater					X			
HIT-2 - HHS Chief Information Officer (CIO) Workplan--IHS will score 90% or greater on the annual scoring of the IHIS CIO Workplan					X			
TOHP-SP - Tribal Consultation						X		

APPENDIX C: NATIONAL ACCOUNTABILITY DASHBOARD FOR QUALITY AND IHS STRATEGIC PLAN CROSSWALK

IHS hospitals and ambulatory health centers report data for the nine measures reported in the NAD-Q; measures are listed in the table below. The IHS NAD-Q dashboard is a tool to support oversight and management of these federal facilities and ensures data is monitored and reported on compliance with IHS policy requirements, accreditation standards, or federal regulations. The crosswalk table below shows the IHS NAD-Q measures in the left column and the IHS Strategic Plan goals and objectives listed in the right columns. The upper case "X" indicates the measure aligns to the IHS objective.

National Accountability Dashboard for Quality (NAD-Q)	IHS Goals							
	Goal 1			Goal 2		Goal 3		
	Objectives							
	1.1	1.2	1.3	2.1	2.2	3.1	3.2	3.3
Active Quality Improvement Program (QIP) - The national percentage of ambulatory facilities that have an active QIP documented in a policy that includes the collection, aggregation, analysis, and reporting of quality improvement data.				X				
Accredited - The national percentage of IHS hospitals and ambulatory facilities that have earned and maintained accreditation by a National Healthcare Accreditation Organization.				X				
Safety Reporting - The national percentage of IHS health care facilities that access, review, and address patient safety event reports to prevent future similar safety incidents/adverse events.				X				
Emergency Preparedness - The national percentage of facilities that have an Emergency Preparedness and Response Plan documented in policy and exercised in accordance with policy.			X					
Patient-Centered Medical Home (PCMH) - The national percentage of IHS ambulatory care facilities that have achieved PCMH recognition to promote high quality patient care, enhance the patient experience, support population health and improve the work environment within the IHS system. PCMH recognition is a recognition of a level of quality of care better than routine accreditation.				X				
Opioid Policy - The national percentage of IHS Hospitals and Ambulatory Health Centers with current local policies aligned with current policies established within the *Indian Health Manual* (IHM) on Chronic Non-Cancer Pain Management and Prescription Drug Monitoring Programs (PDMPs).			X					
Emergency Department (ED) Reporting - The national percentage of healthcare facilities with an Emergency Department reporting rates for Median Time from ED Arrival to ED Departure for Discharged ED Patients and Left Without Being Seen to ensure the delivery of adequate and timely access to care in emergency departments.			X					
Employee Influenza Vaccination - The national percentage of Health care Personnel (HCP) who have received the influenza vaccination to protect patient safety and reduce transmission of influenza in healthcare settings.							X	
Federal Employee Viewpoint Survey (FEVS) Participation - The national percentage of IHS federal employees completing the annual Employee Viewpoint Survey, during the active survey period and includes an assessment of employee job satisfaction across all federal categories and professions.	X							

Michael D. Weahkee,

RADM, Assistant Surgeon General, U.S. Public Health Service, Principal Deputy Director, Indian Health Service.

[FR Doc. 2019–03486 Filed 2–27–19; 8:45 am]

BILLING CODE 4160–16–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Archiving and

Documenting Child Health and Human Development Data Sets (R03).

Date: November 14–15, 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: Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch (SRB), DER Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Rm. 2121A, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03449 Filed 2–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Initial Review Group Population Sciences Subcommittee.

Date: June 27–28, 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: Christiane M. Robbins, Program Officer, Scientific Review Branch (SRB), DER Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121B, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Archiving and Documenting Child Health and Human Development Data Sets (R03).

Date: June 27–28, 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: Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch (SRB), DER Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121A, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

Name of Committee: Research Infrastructure for Centers conducting Population Dynamics Science FY2019 (P2C).

Date: October 28–29, 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: Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch (SRB), DER Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121A, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Sciences Subcommittee.

Date: November 14–15, 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: Christiane M. Robbins, Program Officer, Scientific Review Branch (SRB), DER Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Rm. 2121B, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03448 Filed 2–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Various Stimulating Probes

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of various stimulating probes. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the stimulating probes for purposes of U.S. Government procurement.

DATES: The final determination was issued on February 20, 2019. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202–325–0046).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on 02/20/19, CBP issued a final determination concerning the country of origin of various stimulating probes for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H300744, was issued at the request of Rhythmlink International, LLC, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the processing that occurs in China does not substantially transform the stimulating probes from products of the United States to products of China. Therefore, the stimulating probes are products of the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a

final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: February 20, 2019.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H300744

February 2, 2019

OT:RR:CTF:VS H300744 CMR

CATEGORY: Origin

David S. Robinson, Esq.
Nexsen Pruet
4141 Parklake Avenue
Suite 200
Raleigh, NC 27612

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); subpart B, Part 177, CBP Regulations; Various Stimulating Probes

Dear Mr. Robinson:

This is in response to your request of August 30, 2018, on behalf of your client, Rhythmlink International, LLC, (hereinafter, Rhythmlink) requesting a final determination concerning the country of origin of various stimulating probes for purposes of U.S. government procurement under Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 *et seq.*). Rhythmlink is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1), and is entitled to request this final determination under 19 C.F.R. § 177.23(a). In addition, you have requested a country of origin determination for marking purposes.

FACTS:

Rhythmlink manufactures and distributes medical devices and provides custom packaging, private labeling, custom products and contract manufacturing to its customers. It seeks a country of origin determination for purposes of government procurement under Title III of the TAA for six stimulating probes. These six probes are: the Standard Ball Tip Probe, the Tapered Ball Tip Probe, the Standard Monopolar Probe, the Extended Monopolar Probe, the Monopolar Stimulating Probe with Removable Handle, and the Slide Shaft Stimulating Probe.

The probes are produced in the United States from U.S. origin steel. You describe the processing in the United States as consisting of engineering and design work and manufacturing of the steel probes. The engineering and design work includes: research and development; design control; IP generation; regulatory clearances; specifications; engineering drawings; work instructions; tooling, fixtures, and equipment designs; functional verification testing; sterilization validation; packaging, sterile barrier, shelf life validation; and process validations. The manufacturing which occurs in the United States, by a third-party contract manufacturer, entails cutting raw stainless steel rods of 316 straight grade stainless steel to a specified length to meet specified tolerances. The stainless steel rods are cut by a precision mill or band saw. After cutting, the rods are ground to a precise diameter on a precision lathe. In addition, the lathe is used to create a taper on a portion of one end of the rod to narrow the diameter to half of the original diameter of the tip. The rods are centered precisely on the narrow rod tip and welded to a stainless steel ball to form a connection with a strength of greater than or equal to 36 pounds. The probes resulting from this manufacturing process are then subject to passivation which involves a process of cleaning the probes ultrasonically with an alkaline cleaning detergent, rinsing with deionized water, placing in an acid solution, rinsing twice in separate deionized water tanks and drying. The steel probes are then packaged and shipped to China for further processing.

In China, the probes are attached to a leadwire of Korean origin using Chinese solder, and covered with a heat shrink from China, Japan, or the United States. The probes are attached to a hand grip consisting of a U.S.-origin handle insert and a Korean origin plastic handle. You indicate that the processing in China takes less than four minutes. The finished probes are inserted into a protective cover from the United States and packaged for shipment to the United States.

You indicate that there is an insulated stimulating probe with a removable handle. For the removable handle style probe, there are only two steps performed in China: maintaining an inventory and packaging. The removable handle probe consists of three functional components: an insulated stainless steel probe (United States), a wire with DIN 42-802 connectors on each end coiled tightly (Korea or Japan), and a removable plastic handle (United States). There is no protective cover for this probe as it is secured within a durable plastic tray with a lid which serves as protective packaging. You state that all parts are packed unattached, in a plastic tray, pouched and boxed.

Upon return to the United States, the probes are subjected to a 30-hour sterilization process and subjected to a randomized sampling and testing protocol.

ISSUE:

What is the country of origin of the stimulating probes described herein for U.S. government procurement purposes?

LAW AND ANALYSIS:

U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. §§ 2511-2518).

The rule of origin set forth in 19 U.S.C. § 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The regulations define a ''designated country end product'' as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A ''WTO GPA country end product'' is defined as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 C.F.R. § 25.003.

China is not a WTO GPA country.

In *National Hand Tool Corp. v. United States* (''*National Hand Tool Corp.*''), 16 CIT 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993), the court considered the nature of ''substantial transformation''. At issue were sockets and flex handles which were either cold formed or hot forged into their final shape prior to importation from Taiwan, speeder handles which were reshaped by a power press after importation, and the grip of flex handles which were knurled in the United States. The imported articles were then heat treated which strengthened the surface of the steel, and cleaned by sandblasting, tumbling, and/or chemical vibration before being electroplated. In certain instances, various components were assembled together which the court stated required some skill and dexterity. The court determined that the imported articles were not substantially transformed and that they remained products of Taiwan. In making its determination, the court focused on the fact that the components had been cold-formed or hot-forged ''into their final shape before importation,'' and that ''the form of the components remained the same'' after the assembly and heat-treatment processes performed in the United States. Although the court stated that a predetermined use would not necessarily preclude a finding of a substantial transformation, it noted that such determination must be based on the totality of the evidence. The court then concluded that no substantial change in name, character or use occurred as a result of the processing performed in the United States. *See also, Superior Wire v. United States*, 867 F.2d 1409 (Fed. Cir. 1989), regarding the origin of wire rod made into wire. CBP has recently discussed the applicability of these and similar court decisions to stainless steel drill bits and other various articles exported from the United States for finishing purposes. *See* Headquarters Ruling Letter (HQ) W968396, dated December 21, 2006.

In *Superior Wire v. United States*, 867 F.2d 1409 (Fed Cir. 1989), the court held that wire rod made into wire in Canada was not substantially transformed because there was no significant change in use or character. The court noted that the strength characteristic of the wire was ''metallurgically predetermined'' and the changes were primarily cosmetic. The court viewed the wire rod and wire as ''different stages of the same product.''

In this case, U.S. steel is used in the United States to form the stimulating probes which are sent to China for further processing. We find the processing of the probes that occurs in China does not change the name, character or use of the probes. The probe with the removable handle, for instance, is packed with all parts unattached, in a plastic tray. In HQ H296072, dated July 13, 2018, CBP considered the processing of a Subdermal Needle Electrode. The processing was quite similar to the processing that the stimulating probes undergo in this case, and included soldering a leadwire to the needle electrode, adding a heat shrink and protective cover, and packaging. The stimulating probes are not substantially transformed by the processing that occurs in China. This case differs from HQ H296072 in that a handle is added to the stimulating probes.

In some cases, the attachment of a handle has been determined to be a substantial transformation, in other cases, it has not. *See* HQ 734521, dated September 17, 1992, for a discussion of various rulings involving the attachments of handles and the effect on the origin of the product. *See also,* HQ 559366, dated August 29, 1995; HQ 733804, dated November 9, 1990; and, HQ 561339, dated March 9, 2000. In this case, the handle on the stimulating probes is not necessary to the functioning of the probes, but adds to their ease of use. The stimulating probes are the essence of the products returned to the United States after processing in China. As such, we find the stimulating probes which are processed in China to attach a leadwire and hand grip, and covered with a heat shrink, are considered to be of United States origin for purposes of government procurement.

As for the insulated stimulating probe with a removable handle, which is only packaged in China, the individual parts retain their origin. Packaging of the components does not effectuate a substantial transformation.

With regard to your marking question, Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. 19 C.F.R. Part 134 sets forth the regulations implementing the country of origin marking requirements and exceptions of 19 U.S.C. § 1304, along with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. § 1202). ''Country of origin'' is defined, in relevant part, as: the country of manufacture, production, or growth of any article of foreign origin entering the United States. 19 C.F.R. § 134.1(b). Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part[.]'' As we have determined that no substantial transformation occurs in China due to the processing of the stimulating probes, their origin for marking purposes remains the United States. With regard to the insulated stimulating probe with a removable handle, consisting of an insulated stainless steel probe (United States), a wire with DIN 42-802 connectors on each end coiled tightly (Korea or Japan), and a removable plastic handle (United States), each component retains its individual country of origin for marking purposes. *See* HQ 556451, dated January 28, 1992; and, HQ 561454, dated December 14, 1999.

For purposes of marking, the stimulating probes which are processed in China are products of the United States. Because the stimulating probes are products of the United States that are exported and returned without undergoing a substantial transformation, they are excepted from country of origin marking requirements pursuant to 19 C.F.R. 134.32(m). With regard to the insulated stimulating probe that is merely packaged in China with a handle

and wire connect, the origin of each component must be identified. Please note that if you wish to mark the stimulating probes, the insulated stimulating probe, or the packaging containing these products to indicate that they are ''Made in the USA'', the marking must comply with the requirements of the Federal Trade Commission (FTC). We suggest that you direct any questions on this issue to the FTC.

HOLDING:

Based on the information provided, with the exception of the insulated stimulating probe with a removable handle, the country of origin of the stimulating probes is the United States. With regard to the insulated stimulating probe with a removable handle, which is only packaged in China, the country of origin of the individual packaged components remains unchanged.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2019–03539 Filed 2–27–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Notice of Availability for Policy Guidance Related to Implementation of the Migrant Protection Protocols

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the ''Policy Guidance for Implementation of the Migrant Protection Protocols'' on the Department of Homeland Security (DHS) website, and of other related documents on DHS component websites.

DATES: The policy guidance was issued on January 25, 2019.

SUPPLEMENTARY INFORMATION: On December 20, 2018, the Secretary of Homeland Security (Secretary) announced that DHS, consistent with the Migrant Protection Protocols, would begin implementation of section 235(b)(2)(C) of the Immigration and Nationality Act on a wide-scale basis to resolve the migration crisis along our southern border.

On January 25, 2019, the Secretary issued ''Policy Guidance for Implementation of the Migrant Protection Protocols.'' The January 25, 2019, policy guidance is available on the DHS website at the following location: *https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf.*

DHS components subsequently issued the following related documents, which are available on the DHS component websites at the following locations:

- U.S. Customs and Border Protection, *Guiding Principles for Migrant Protection Protocols* (Jan. 28, 2019), available at *https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf.*
- U.S. Customs and Border Protection, Memorandum from Kevin K. McAleenan, Commissioner, for Todd C. Owen, Executive Assistant Commissioner, Field Operations, and Carla L. Provost, Chief, U.S. Border Patrol, *Implementation of the Migrant Protection Protocols* (Jan. 28, 2019), available at *https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/Implementation%20of%20the%20Migrant%20Protection%20Protocols.pdf.*
- U.S. Customs and Border Protection, Memorandum from Todd A. Hoffman, Executive Director, Admissibility and Passenger Programs, Office of Field Operations, for Director, Field Operations, Office of Field Operations and Director Field Operators Academy, Office of Training and Development, *Guidance on Migrant Protection Protocols* (Jan. 28, 2019), available at *https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20OFO%20Memo%201-28-19.pdf.*
- U.S. Immigration and Customs Enforcement, Memorandum from Ronald Vitello, Deputy Director and Senior Official Performing the Duties of the Director, for Executive Associate Directors and Principal Legal Advisor, *Implementation of the Migrant Protection Protocols* (Feb. 12, 2019), available at *https://www.ice.gov/factsheets/migrant-protection-protocols-mpp.*
- U.S. Immigration and Customs Enforcement, Memorandum from Nathalie R. Asher, Acting Executive Associate Director, for Field Office Directors, Enforcement and Removal Operations, *Migrant Protection Protocols Guidance* (Feb. 12, 2019), available at *https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-Memo.pdf.*
- U.S. Citizenship and Immigration Services, Policy Memorandum PM–602–0169, *Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols* (Jan. 28, 2019), available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf.*

Kirstjen M. Nielsen,

Secretary.

[FR Doc. 2019–03541 Filed 2–27–19; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0045]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until April 29, 2019.

ADDRESSES: You may submit comments, identified by docket number ICEB–2019–0001 by one of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting.
- *Email: icepra@ice.dhs.gov.* Please include the docket number in the subject line of the message.

• *Mail:* Submit written comments of DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

Instructions: All submissions received must include the agency name and docket number ICEB–2019–0001. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: John Monette, (802–288–7697), *john.p.monette@ice.dhs.gov,* Revenue Management Unit Chief-Bonds, U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 agencies 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–395; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement of States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10 Responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated annual cost burden associated with this collection of information is 87,500.

Dated: February 25, 2019.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2019–03547 Filed 2–27–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

[1653–0037]

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection: Notice to Student or Exchange Visitor

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) will submit 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. This information collection was previously published in the **Federal Register** on November 1, 2018, allowing for a 60-day comment period. ICE received no comments during this period. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until April 1, 2019.

ADDRESSES: Interested persons are invited to submit written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, 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 1653–0037.

SUPPLEMENTARY INFORMATION:

Comments

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 agencies 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–515A; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. An academic nonimmigrant student (F–1), vocational nonimmigrant student (M–1), exchange visitor (J–1), or dependent (F–2, M–2 or J–2) seeking admission into the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act (Act) is required to present certain

documentation at the port of entry. If the F, J or M nonimmigrant is missing any piece of this documentation, a Department of Homeland Security (DHS) Customs and Border Protection (CBP) officer at the port of entry has discretion to issue the F, J or M nonimmigrant a Form I–515A, Notice to Student or Exchange Visitor, which allows the nonimmigrant temporary entry into the United States for 30 days in order for the nonimmigrant to compile and submit the documentation. The Form I–515A provides a list of the documentation the F, J or M nonimmigrant will need to provide to DHS. The F, J or M nonimmigrant must send the documentation to the Student and Exchange Visitor Program (SEVP), an office of the DHS agency, U.S. Immigration and Customs Enforcement (ICE). SEVP must receive a complete response within 30 days of the F, J or M nonimmigrant's admission. Form I–515A collects information authorized by 8 U.S.C. 1101 and 1184 to confirm that the F, J or M nonimmigrant is eligible for admission into the United States. The Form I–515A enables CBP to avoid having to deny entry into the United States to an otherwise eligible F, J or M nonimmigrants.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,744 responses at 10 minutes (0.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 788 annual burden hours.

Dated: February 25, 2019.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2019–03533 Filed 2–27–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6136–N–02]

Waiver and Alternative Requirement for Community Development Block Grant Disaster Recovery (CDBG–DR) Grantees

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: On January 9, 2019, HUD published a **Federal Register** notice waiving and establishing an alternative requirement for the timing of review of Community Development Block Grant Disaster Recovery (CDBG–DR) Action Plans for Disaster Recovery and Action Plan amendments that were pending approval as of December 22, 2018. HUD took this action due to the lapse in its appropriations for Fiscal Year (FY) 2019 and the resultant inability to satisfactorily complete the review and approval process consistent with HUD's customary timeline. The January 9, 2019 notice stated that HUD would announce a revised time period for completion of the review of pending Action Plans and amendments following enactment of funding for the Department's normal operations. Through this notice, HUD announces the revised review deadline.

DATES: *Applicability Date:* February 28, 2019.

FOR FURTHER INFORMATION CONTACT: David C. Woll, Jr., Acting Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7100, Washington, DC 20410, telephone number 202–708–2690. Persons with hearing or speech disability may access this number via TTY/VRS by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Woll at 202–708–0033. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 115–123 [1] appropriated $28 billion of CDBG–DR funding for two purposes: (1) To address unmet needs arising from certain major declared disasters that occurred in 2017; [2] and (2) to fund mitigation activities for all CDBG–DR grantees that received CDBG–DR funding in response to unmet needs arising from major disasters declared in 2015, 2016, and 2017. These funds were in addition to $7.4 billion appropriated by Public Law 115–56 [3] for unmet needs arising from major declared disasters in 2017. HUD allocated virtually all funding for unmet needs and established administrative requirements via two **Federal Register** notices published on February 9, 2018,[4] and August 14, 2018.[5]

In general, the funds for unmet needs are to be used for activities authorized under title I of the Housing and Community Development Act of 1974 [6] (HCD Act) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the ''most impacted and distressed'' areas resulting from the qualifying major disaster. By providing the supplemental disaster recovery funding under title I of the HCD Act, Congress implicates the general statutory and regulatory requirements of the Community Development Block Grant (CDBG) program.

Public Laws 115–123 and 115–56 require that, prior to the obligation of funds, grantees must submit for approval a plan to the Secretary that details the proposed use of funds. The February 9, 2018, and August 14, 2018, **Federal Register** notices and 24 CFR 91.500(a) provide that HUD must review these plans within 45 days from the date of receipt. HUD may use its regulatory waiver authority at 24 CFR 5.110 to extend this review period to 60 days from the date of receipt, consistent with HUD's implementation of section 105(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(c)(1)), which governs action plan submissions under HUD's consolidated planning regulations at 24 CFR part 91.

Public Laws 115–123 and 115–56 also authorize the Secretary of HUD to waive or specify alternative requirements for any statutory or regulatory provision administered by HUD in connection with CDBG–DR funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) upon a finding of good cause that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act.

Commencing at 12:00 a.m. Eastern Standard Time (EST) on December 22, 2018, and ending on January 25, 2019, HUD operations were limited to certain excepted activities as a result of the lapse in FY 2019 appropriations. As a result, HUD could not be assured of completing its review of pending submissions and issuing affirmative approvals within the 60-day period established by section 105(c)(1) of the Cranston-Gonzalez National Affordable Housing Act. Accordingly, on January 9,

[1] See Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018, title XI, subdivision I, division B, of Public Law 115–123.

[2] Of the amounts for unmet needs, $2 billion in CDBG–DR is more specifically for the purpose of enhancing or improving electrical power systems in jurisdictions affected by Hurricane Maria in 2017. A **Federal Register** notice for such amounts will be published in the future.

[3] See Supplemental Appropriations for Disaster Relief Requirements, 2017, division B of Public Law 115–56.

[4] 83 FR 5844.

[5] 83 FR 40314.

[6] 42 U.S.C. 5301 *et seq.*

2019,[7] HUD published a notice announcing that the Secretary found good cause to waive the statutory 60-day review deadline and was issuing an alternative requirement for review of pending Action Plans and Action Plan amendments involving funding under Public Laws 115–123 and 115–56. The January 9, 2019, **Federal Register** notice provided that ''HUD would review pending Action Plan Amendments and Action Plans and provide affected grantees with a decision within a time period which will be announced by HUD after enactment of funding for the Department's normal operations.''[8]

II. This Notice—Revised Review Deadline

This notice announces the revised deadline for HUD review of CDBG–DR Action Plans and amendments. The revised deadline is measured from the end of the appropriations lapse that impacted HUD's operations. The Department will review and respond not later than March 1, 2019, Action Plan amendments that were pending as of December 21, 2018. This approach means that HUD will act upon such Action Plan amendments within 35 days of resuming operations subsequent to the appropriations lapse that ended January 26, 2019. Concurrently, the Department will review and respond not later than March 15, 2019, to Action Plans that were pending as of December 21, 2018. This means that HUD will act upon such Action Plans within 50 days of resuming operations subsequent to the same appropriations lapse. These timeframes account for days lost to the review process during the lapse but also account for time associated with the full resumption of regular work activities by HUD staff subsequent to the end of the lapse. This approach acknowledges not only the general complexity of the Action Plan submissions, but also the cumulative impact upon HUD staffing and operations resulting from the lapse in appropriations.

Dated: February 22, 2019.

David C. Woll, Jr.,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–03530 Filed 2–27–19; 8:45 am]

BILLING CODE 4210–67–P

[7] 84 FR 97.

[8] 84 FR 97, at 98, first column.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N001; FXMB12310900WHO–189–FF09M26000; OMB Control Number 1018–0023]

Agency Information Collection Activities; Migratory Bird Harvest Information Program and Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an information collection.

DATES: Interested persons are invited to submit comments on or before April 29, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0023 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) setting hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under 50 CFR 20.20, migratory bird hunters must register for the Migratory Bird Harvest Information Program in each State in which they hunt each year. State natural resource agencies must send names and addresses of all migratory bird hunters to Branch of Harvest Surveys, U.S. Fish and Wildlife Service Division of Migratory Bird Management, on an annual basis.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program. We randomly select migratory bird hunters and ask them to report their harvest. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest for the species surveyed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard if they are willing to participate in the

Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose that they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, snipe, rail, or gallinule that they harvest. We use the wings and tail feathers to identify the species, sex, and ages of the harvested samples. We also ask respondents to report on the envelope the date and location of harvest for each bird. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

We received approval under the DOI Fast Track clearance process (OMB Control No. 1090–0011) to conduct limited user testing of a new online hunter diary survey. With this submission, we will request OMB approval of this new online harvest survey that will eventually replace our paper hunter diary survey (after a phase-in period of 3 years). The new online survey consists of a series of four questions, which ask for the same information that is currently solicited on our paper forms, but in an easier and more streamlined format. The online form also allows for hunters to keep track of their hunting activity in the form of a log, which they can download or print at the end of the season. Preliminary testing of this online survey suggests that the completion time is less than that of our paper surveys and will provide hunters with a more enjoyable experience.

Title of Collection: Migratory Bird Information Program and Migratory Bird Surveys, 50 CFR 20.20.

OMB Control Number: 1018–0023.

Form Number: Forms 3–165, 3–165A through E, 3–2056J through N.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States and migratory game bird hunters.

Respondent's Obligation: Mandatory for Harvest Information Program registration information; voluntary for participation in the surveys.

Frequency of Collection: Annually or on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Form No.	Number of respondents	Number of responses	Completion time per response	Total annual burden hours *
Migratory Bird Harvest Information Program					
Government	None	49	784	157 hours	123,088
Migratory Bird Hunter Survey					
Individuals	Form 3–2056J	18,500	18,500	5 minutes	1,542
Individuals	Form 3–2056K	11,550	11,550	4 minutes	770
Individuals	Form 3–2056L	4,450	4,450	4 minutes	297
Individuals	Form 3–2056M	6,000	6,000	3 minutes	300
Sandhill Crane Harvest Survey					
Individuals	3–2056N	2,000	2,000	3.5 minutes	117
Parts Collection Survey					
Individuals	Form 3–165	4,200	92,400	5 minutes	7,700
Individuals	Form 3–165A	1,000	5,500	5 minutes	458
Individuals	Form 3–165B	3,600	3,600	1 minute	60
Individuals	Form 3–165C	400	400	1 minute	7
Individuals	Form 3–165D	1,100	1,100	1 minute	18
Individuals	Form 3–165E	900	1,350	5 minutes	113
Online Hunter Diary Survey (all species groups)					
Individuals	On-line	42,500	42,500	4 minutes	2,833
Totals		96,249	190,134		137,303

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 25, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–03497 Filed 2–27–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LWYD010000 L13140000 EJ0000 18X]

Notice of Termination of the Environmental Impact Statement for the La Barge Platform Project, Sublette and Lincoln Counties, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Termination.

SUMMARY: The Bureau of Land Management (BLM) has terminated the preparation of an Environmental Impact Statement (EIS) for the development of approximately 605 new oil and natural gas wells proposed by EOG Resources, Inc. (EOG), entitled the La Barge Platform Project. An additional 175 natural gas wells by other operators were also being considered. The BLM terminated the EIS after project proponents withdrew their proposal, citing changing priorities.

DATES: This Notice takes effect on February 28, 2019.

FOR FURTHER INFORMATION CONTACT: L. McKeever, BLM, telephone: 307–367–5300; address: P.O. Box 768, Pinedale, WY. 82941; email: *lmckeeve@blm.gov.* Persons using a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339. FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A Notice of Intent was published in the **Federal Register** on August 3, 2009, (74 FR 38466) to begin preparing an EIS for the La Barge Platform Project in Sublette County and Lincoln County, WY.

The BLM Field Office in Pinedale, WY, solicited public comments pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and in response to a proposal from EOG. The publication of the notice initiated the 45-day public scoping process.

The La Barge Platform Project's project area was located within 3 miles of Big Piney, WY, and within 1 mile of La Barge, WY. After project proponents withdrew their proposal because of changing market forces, preparation of the EIS was terminated in accordance with 40 CFR 1506.6 and 40 CFR 1506.10.

Authority: 40 CFR 1506.6 and 40 CFR 1506.10.

Mary Jo Rugwell,

BLM Wyoming State Director.

[FR Doc. 2019–03596 Filed 2–27–19; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–27315; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before February 9, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by March 15, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 9, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

FLORIDA

Pinellas County

Cycadia Cemetery, 1105 E Tarpon Ave., Tarpon Springs, SG100003522

IOWA

Polk County

East Des Moines Commercial Historic District, (Iowa's Main Street Commercial Architecture MPS), Roughly bounded by E 4th, Des Moines, E 6th, and E Locust Sts., Des Moines, MP100003523

MASSACHUSETTS

Hampden County

Federal Square Historic District, 1 Federal St., Springfield, SG100003546

MINNESOTA

Ramsey County

White Bear Lake Armory, 2228 4th St., White Bear Lake, SG100003532

OHIO

Cuyahoga County

Roundwood Manor at Daisy Hill Farm, 3450 Roundwood Rd., Hunting Valley, SG100003526

Hamilton County

Wise, Isaac M., Temple-Center, 3771 Reading Rd., Cincinnati, SG100003527

PENNSYLVANIA

Bucks County

Fullam, John and Alice, House, 372 Brownsburg Rd., Wrightstown Township, SG100003519

Northampton County

Edelman Schoolhouse, 165 Longley Rd., Moore Township, SG100003520

TEXAS

Cameron County

Hollowell, Cieta Friedman and Harry W, House, 622 E Saint Charles St., Brownsville, SG100003533

El Paso County

Ray Sherman Place, 4528 Blanco Ave., El Paso, SG100003534

Tays Place, 2114 E Magoffin Ave., EL Paso, SG100003535

Gregg County

McWilliams Building, 208 N Green St., Longview, SG100003536

Hansford County

Hansford County Courthouse, 15 NW Court St., Spearman, SG100003537

Nacogdoches County

Mangham-McIlwain Building, 10001 Appleby Sand Rd., Nacogdoches, SG100003538

Smith County

Tyler Municipal Rose Garden, 420 Rose Park Dr., Tyler, SG100003539

UTAH

Wasatch County

Buehler, John H. and Agnes, House, 806 N River Rd., Midway, SG100003529
Hancock, Levi and Ellen O'Neil, House, 304 East 100 North, Midway, SG100003530

VERMONT

Windsor County

Gilbert's Hill, 1362 Barnard Rd., Woodstock, SG100003524

VIRGINIA

Frederick County

Rock Hill, 199 Gold's Hill Rd., Winchester vicinity, SG100003540
Fredericksburg Independent City, St. George's Episcopal Church, 905 Princess Anne St., Fredericksburg, SG100003541

King George County

White Plains, 15318 James Madison Pkwy., King George vicinity, SG100003542

Loudoun County

James Farm, 15021 Mountain Rd., Purcellville vicinity, SG100003543

Richmond Independent City

Blackwell Historic District, Roughly bounded by Decatur & E 14th Sts., Dinwiddy Ave. & Jefferson Davis Hwy., Richmond, SG100003544

WASHINGTON

King County

Daughters of the American Revolution-Rainier Chapter House, 800 East Roy St., Seattle, SG100003525

WEST VIRGINIA

Brooke County

Market Street Bridge, WV 2 spur, mile post 0.01/Market St., Follansbee vicinity, SG100003517

Fayette County

New Deal Resources in Babcock State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS), 486 Babcock Rd., Clifftop, MP100003518

WISCONSIN

Dane County

Madison Vocational School, 211 N Carroll St., Madison, SG100003545

A request for removal has been made for the following resource:

UTAH

Duchesne County

Simmons Ranch, 8 mi. S of US 40, Fruitland vicinity, OT92000463

Additional documentation has been received for the following resource:

MASSACHUSETTS

Suffolk County

Mount Hope Cemetery, 355 Walk Hill St., Boston, AD09000767

Authority: Section 60.13 of 36 CFR part 60.

Dated: February 13, 2019.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–03490 Filed 2–27–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Fourth Review)]

Fresh Tomatoes From Mexico; Revised Schedule for Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 22, 2019.

FOR FURTHER INFORMATION CONTACT: Amelia Shister (202–205–2047), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2018, the Commission established a schedule for the conduct of the full five-year review (83 FR 50408, October 5, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule. On February 6, 2019, the U.S. Department of Commerce notified the Commission of its intent to ''withdraw from the 2013 Suspension Agreement on Fresh Tomatoes from Mexico (Agreement), effective May 7, 2019.'' However, until the Agreement is terminated, there is no provision in the law for the Commission to terminate its five-year review and, due to the proximity of this notice to the Commission's statutory deadline, it must proceed with conducting its five-year review.

The Commission's revised dates in the schedule are as follows: The prehearing staff report will be placed in the nonpublic record on March 4, 2019; the deadline for filing prehearing briefs is March 13, 2019; requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 14, 2019; the prehearing conference will be held at the U.S. International Trade Commission Building on March 18, 2019, if deemed necessary; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 21, 2019; the deadline for filing posthearing briefs and for written statements from any person who has not entered an appearance as a party is March 29, 2019; the Commission will make its final release of information on April 26, 2019; and final party comments are due on May 1, 2019.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: This review is 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 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03476 Filed 2–27–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–618–619 and 731–TA–1441–1444 (Preliminary)]

Carbon and Alloy Steel Threaded Rod From China, India, Taiwan, and Thailand; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–618–619 and 731–TA–1441–1444

(Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of carbon and alloy steel threaded rod from China, India, Taiwan, and Thailand, provided for in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and by reason of such imports alleged to be subsidized by the Governments of China and India. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 8, 2019. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 15, 2019.

DATES: February 21, 2019.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on February 21, 2019, by Vulcan Steel Products Inc., Pelham, Alabama.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 14, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before March 12, 2019. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 19, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03450 Filed 2–27–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1435–1440 (Preliminary)]

Acetone From Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain; Institution of Antidumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1435–1440 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain, provided for in subheading 2914.11.10 and 2914.11.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by April 5, 2019. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 12, 2019.

DATES: February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Abu Kanu (202) 205–2597, 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on February 19, 2019, by AdvanSix Inc., Parsippany, New Jersey, Altivia Petrochemicals, LLC, Haverhill, Ohio, and Olin Corporation, Clayton, Missouri.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Tuesday, March 12, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Friday, March 8, 2019. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 15, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 22, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03477 Filed 2–27–19; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee; Correction

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications; correction.

SUMMARY: The Joint Board for the Enrollment of Actuaries published a document in the **Federal Register** of February 19, 2019, 84 FR 4856, inviting applications from those interested in

serving on the Advisory Committee on Actuarial Examinations for the term May 1, 2019–February 28, 2021. The document contained two different application due dates. The correct application due date is March 19, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, at 202–317–3648.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** notice published on Tuesday, February 19, 2019, page 4856, Application Requirements, the last sentence is corrected to read:

Applications must be received by no later than March 19, 2019.

Dated: February 22, 2019.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2019–03563 Filed 2–27–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on HEDGE IV

Notice is hereby given that, on January 7, 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''), Southwest Research Institute—Cooperative Research Group on HEDGE IV (''HEDGE IV'') 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, Denso International America, Inc., Southfield, MI; Eaton Corporation, Southfield, MI; and Robert Bosch LLC, Farmington Hill, MI, 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 HEDGE IV intends to file additional written notifications disclosing all changes in membership.

On February 14, 2017, HEDGE IV, 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 27, 2017 (82 FR 15238).

The last notification was filed with the Department on August 1, 2018. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 14, 2018 (83 FR 40337).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03532 Filed 2–27–19; 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—American Wood Council

Notice is hereby given that, on February 12, 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''), American Wood Council (''AWC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Wood Council, Leesburg, VA. The nature and scope of this AWC's standards development activity is: Development of a new consensus standard for engineered design of permanent wood foundations, replacing the 2015 version.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03535 Filed 2–27–19; 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—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on January 31, 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''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') 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, IFM Efector, Inc., Malvern, PA, and Push Corp., Inc., Garland, TX, 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 RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas 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 June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on November 8, 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. 2019–03512 Filed 2–27–19; 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—Cooperative Research Group on Advanced Combustion Catalyst and Aftertreatment Technologies–II

Notice is hereby given that, on February 6, 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''), Southwest Research Institute—Cooperative Research Group on Aftertreatment Technologies (''AC²AT–II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Cummins, Inc., Columbus, IN; Denso Corporation, Aichi-ken, JAPAN; Isuzu, Tokyo, JAPAN; Komatsu Ltd., Tochigi-ken, JAPAN; and Weichai Power Co., Ltd., Weifang, PEOPLE'S REPUBLIC OF CHINA.

The general area of planned activities of AC²AT–II is to develop the most cost effective solutions for future engine systems by identifying and addressing the opportunities and challenges for integration of catalysts and aftertreatment systems to engines with advanced combustion technologies. The proposed program incorporates projects focused in four distinct areas: (1) Development of aftertreatment simulation tools; (2) low temperature catalyst design; (3) advanced aftertreatment system integration; and (4) catalyzed urea water solution (UWS).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03534 Filed 2–27–19; 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—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on February 8, 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''), Interchangeable Virtual Instruments Foundation, Inc. (''IVI Foundation'') 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, Acqiris SA, Plan-les-Ouates, SWITZERLAND, has been added as a party 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 IVI Foundation intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, IVI Foundation 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 July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on June 14, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 9, 2018 (83 FR 31775).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03529 Filed 2–27–19; 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—Cooperative Research Group on CHEDE-VII

Notice is hereby given that, on February 6, 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''), Southwest Research Institute—Cooperative Research Group on CHEDE-VII (''CHEDE-VII'') 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, A&D Technology, Inc., Ann Arbor, MI, has been added as a party 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 CHEDE-VII intends to file additional written notifications disclosing all changes in membership.

On January 6, 2016, CHEDE-VII 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 February 2, 2016 (81 FR 5484).

The last notification was filed with the Department on November 8, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 13, 2017 (82 FR 58653).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03528 Filed 2–27–19; 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—Medical CBRN Defense 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''), Medical CBRN Defense Consortium (''MCDC'') 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, Altimmune, Inc., Gaithersburg, MD; Attogene Corp, Austin, TX; Autonomous Therapeutics, Inc., Brooklyn, NY; Government

Scientific Source (GSS), Reston, VA; Lauren Sciences, New York, NY; Locus Biosciences, Morrisville, NC; Maxim Biomedical, Inc., Rockville, MD; MedsForAll, Inc., Seattle, WA; Pirouette Medical, Boston, MA; and University of Washington, Seattle, WA, have been added as parties to this venture.

Also, AEQUOR, Inc., Oceanside, CA; Albany Molecular Research Inc. (AMRI), Albany, NY; Binergy Scientific, Inc., Atlanta, GA; New Mexico Institute of Mining and Technology, Socorro, NM; Polo Custom Products, Topeka, KS; and SENTEL Corporation, Alexandria, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC 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 January 6, 2016 (81 FR 513).

The last notification was filed with the Department on October 16, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2018 (83 FR 55739).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03527 Filed 2–27–19; 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—National Spectrum 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''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Enveil, Inc., Fulton, MD; World Wide Technology, Inc. (WWT), St. Louis, MO; MegaWave Corporation, Worcester, MA; Athena Technologies, LLC, Orlando, FL; GBL Systems Corporation, Camarillo, CA; GPS Source, Inc., Pueblo, CO; JC3 LLC, Rockbridge Baths, VA; Kumu Networks, Sunnyvale, CA; IMSAR LLC, Springville, UT; and Parry Labs, LLC, Columbia, MD, have been added as parties to this venture.

Also, Avcom of Virginia, Inc., N Chesterfield, VA; Florida International University, Miami, FL; Northeastern University, Boston, MA; Northwestern University, Evanston, IL; University at Buffalo, Buffalo, NY; Vanu Inc., Lexington, MA; Foundry Inc., Millersville, MD; OpenJAUS, LLC, Lake Mary, FL; University of California, Irvine, Irvine, CA; US Ignite, Inc., Washington, DC; Warrior Support Solutions, LLC, Hollis, NH; and COMINT Consulting LLC, Golden, CO, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

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 November 7, 2018 (83 FR 55739).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03521 Filed 2–27–19; 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—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 8, 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''), PXI Systems Alliance, Inc. (''PXI Systems'') 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, Computer Conversions Corporation, East Northport, NY; and Art Beijing Science & Tech. Dev. Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, StanTronic Instruments GmbH, Herrenberg, GERMANY, has withdrawn as a party 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 PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems 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 8, 2001 (66 FR 13971).

The last notification was filed with the Department on September 4, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2018 (83 FR 47643).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03537 Filed 2–27–19; 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—Cooperative Research Group on Energy Storage System Evaluation and Safety II

Notice is hereby given that, on February 11, 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''), Southwest Research Institute—Cooperative Research Group on Energy Storage System Evaluation and Safety II (''EssEs-II'') 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, Deere & Company, Moline, IL, has been added as a party 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 EssEs-II intends to file additional written notifications disclosing all changes in membership.

On September 21, 2016, EssEs-II 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 15, 2016 (81 FR 80087).

The last notification was filed with the Department on February 21, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2017 (82 FR 16419).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03526 Filed 2–27–19; 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—Undersea Technology Innovation 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''), Undersea Technology Innovation Consortium (''UTIC'') 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, Allegheny Technologies Inc., Billerica, MA; Alliant Techsystems Operations LLC (Northrop Grumman Innovation Systems), Plymouth, MN; AMERICAN SYSTEMS, Middletown, RI; AMETEK SCP, Westerly, RI; Applied Mathematics Inc., Gales Ferry, CT; Argon St. Inc., a Boeing Company, Fairfax, VA; Asymmetric Technologies, Columbus, OH; BAE Systems Technology Solutions & Services Inc., Rockville, MD; Bailey Tool & Mfg. Co., Lancaster, TX; Ball Aerospace & Technologies Corp., Boulder, CO; Beck Engineering Inc., Poulsbo, WA; BioSonics Inc., Seattle, WA; Blue Ridge Envisioneering, Chantilly, VA; Boston Engineering Corp., Waltham, MA; Charles River Analytics Inc., Cambridge, MA; CUBRC Inc., Buffalo, NY; EaglePicher Technologies, St. Louis, MO; Electro Standards Laboratory Inc., Cranston, RI; Epsilon Systems Solutions Inc., San Diego, CA; EWA Government Systems Inc., Herndon, VA; Expedition Technology Inc., Dulles, VA; Fathom5 Corporation, Austin, TX; FGS LLC, La Plata, MD; Geodynamics LLC, Newport, NC; Gibbs & Cox Inc., Arlington, VA; Hydroid Inc., Pocasset, MA; Innovative Defense Technologies, Arlington, VA; IO Marine Systems Inc., New Orleans, LA; JPAnalytics LLC, East Falmouth, MA; L3 MariPro, Goleta, CA; L3 Open Water Power, Somerville, MA; LBI Inc., Groton, CT; Lockheed Martin RMS, Manassas, VA; Lynntech Inc., College Station, TX; Makai Ocean Engineering, Waimanalo, HI; Manufacturing Techniques Inc., Kilmarnock, VA; Marine Ventures International Inc., Stuart, FL; Maritime Applied Physics Corporation, Baltimore, MD; Measurement Analysis Corp., Torrance, CA; Microsoft Corporation, Redmond, WA; Millennium Corporation, Arlington, VA; Moog Inc., Space & Defense Group, Elma, NY; Navmar Applied Sciences, Warminster, PA; Northeastern University, Burlington, MA; Ocean Acoustical Services & Instrumentation Systems Inc. (OASIS), Lexington, MA; Offset Strategic Services LLC, Huntsville, AL; ORBIS Sibro Inc., Mount Pleasant, SC; PCCI Inc., Alexandria, VA; Photonic Systems Inc., Billerica, MA; Physical Sciences Inc., Andover, MA; Planck Aerosystems Inc., San Diego, CA; R&D Technologies Inc., N Kingstown, RI; Saft America Inc., Cockeysville, MD; Scientific Systems Co. Inc., Woburn, MA; Sea Machines Robotics Inc., Boston, MA; Sierra Nevada Corporation, Sparks, NV; Signal Systems Corporation, Millersville, MD; Solute Inc., San Diego, CA; Syntonics LLC, Columbia, MD; Technical Systems Integration Inc., Chesapeake, VA; Transtecs Corporation, Arlington, VA; URSA Inc., Exeter, NH; Vencore Labs Inc. dba Perspecta, Basking Ridge, NJ; XST Inc., San Diego, CA; and ZAF Energy Systems Inc., Bozeman, MT, have been added as parties to this venture.

Also, Dioxide Materials, Inc., Boca Raton, FL, has withdrawn as a party 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 UTIC intends to file additional written notifications disclosing all changes in membership.

On October 9, 2018, UTIC 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 2, 2018 (83 FR 55203).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03513 Filed 2–27–19; 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—UHD Alliance, Inc.

Notice is hereby given that, on January 31, 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''), UHD Alliance, Inc. (''UHD Alliance'') 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, Arcelik AS Electronics Plant, Kapakli, TURKEY, has been added as a party to this venture.

In addition, Analogix Semiconductor Inc., Santa Clara, CA; SPI International Inc., New York, NY; Tata Sky Limited, Mumbai, INDIA; and Telus Communication Inc., Edmonton, CANADA, 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 UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance 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 July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on November 16, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on December 18, 2018 (83 FR 64878).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03536 Filed 2–27–19; 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—Medical Technology Enterprise 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''), Medical Technology Enterprise Consortium (''MTEC'') 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, Worcester Polytechnic Institute, Worcester, MA; Odyssey Systems Consulting Group, Ltd., Wakefiled, MA; Serpin Pharma, Nokesville, VA; Csymplicity Software Solutions, Inc., Allentown, PA; Qrons, Inc., Miami, FL; Intelligent Optical Systems, Inc., Torrance, CA; Abfero Pharmaceuticals Inc., Boston, MA; Shamrock Medical LLC, Phoenix, AZ; Sleep Care, Inc., Columbus, OH; Solution Guidance Corporation, Chantilly, VA; Existential Technologies, Inc., Chula Vista, CA; Bionica Labs LLC, Richmond, VA; Acell, Inc., Columbia, MD; Awarables Inc., Baltimore, MD; Onera BV, AB Eindhoven, THE NETHERLANDS; Healios, Inc., Flemington, NJ; Sanofi Pasteur, Swiftwater, PA; Biobeat Technologies Ltd., Petach Tikva, ISRAEL; Sana Health, Inc., San Anselmo, CA; ThoraXS Israel 17 Ltd, Tzur hadassa, ISRAEL; ADM Tronics Unlimited, Inc., Northvale, NJ; Aktivax, Inc., Broomfield, CO; XSurgical, Inc., Ipswich, MA; 98point6 Inc., Seattle, WA; University of Montana, Missoula, MT; Engility Corporation, Chantilly, VA; Entasis Therapeutics, Waltham, MA; Thomas Jefferson University, Philadelphia, PA; Gryphon Bio, Inc., South San Francisco, CA; Arcos, Inc., and Missouri City, TX; have been added as parties to this venture.

Also, Actuated Medical, Inc., Bellefonte, PA; Disarm Therapeutics, Inc., Cambridge, MA; Global Virus Network, Inc., Baltimore, MD; Health Research, Inc.—Wadsworth Center, Menands, NY; Parsons Government Services Inc., Pasadena, CA; Perceptronics Solutions, Inc., Sherman Oaks, CA; Tallinn University of Technology, Tallin, ESTONIA; The Regents of the University of Michigan, Ann Arbor, MI; and The Washington University, St. Louis, MO; 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 MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC 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 June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on October 12, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2018 (83 FR 55204).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03540 Filed 2–27–19; 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—Border Security Technology Consortium

Notice is hereby given that, on February 1, 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''), Border Security Technology Consortium (''BSTC'') 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, Benchmark Electronics, Inc., Scottsdale, AZ; Phelps2020, Knoxville, TN; Echodyne Corp., Kirkland, WA; Global Justice Solutions, LLC, San Antonio, TX; Cipher Tech Solutions, Inc., Upper Nyack, NY; Blue Force Consulting, Westminster, MD; Harris Night Vision, Roanoke, VA; Next Century Corporation, Annapolis Junction, MD; Passport Systems, Inc., N Billerica, MA; Battelle Memorial Institute, Columbus, OH; RadiaBeam Technologies, LLC, Santa Monica, CA; CT Strategies, Washington, DC; Synapse Technology, Palo Alto, CA; and JDL Digital Systems DBA AirShip VMS, Redmond, WA, have been added as parties to this venture.

Also, Michigan Technology University, Houghton, MI; DroneShield, Warrenton, VA; Tygart Technology, Inc., Fairmont, WV; Neos Diamant, Manassas, VA; Percipient.ai, Reston, VA; and TRI–COR Industries, Inc., Alexandria, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC 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 June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on November 27, 2018. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 19, 2018 (83 FR 65182).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03522 Filed 2–27–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Learfield Communications, LLC, IMG College, LLC, and A–L Tier I LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Learfield Communications, LLC, IMG College, LLC, and A–L Tier I LLC,* Civil Action No. 1:19–cv–00389. On February 14, 2019, the United States filed a

Complaint alleging that that Learfield Communications, LLC's (''Learfield'') and IMG College, LLC's (''IMG'') agreements not to compete for multimedia rights contracts for universities' athletic programs violate Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and entering into or extending multimedia rights joint ventures (absent approval from the United States), and it requires Defendants to implement an antitrust compliance training program.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Owen M. Kendler, Chief, Media, Entertainment and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202–305–8376).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Learfield Communications, LLC, IMG College, LLC, and A-L TIER I LLC,* Defendants.

Civil Action No.: 1:19-cv-00389

Judge: Emmet G. Sullivan

COMPLAINT

The United States of America brings this civil action to enjoin anticompetitive conduct by IMG College (''IMG''), Learfield Communications, LLC (''Learfield''), and A-L Tier I LLC, and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Athletic programs of the nation's universities have limited opportunities to generate revenue, and thus sponsorship revenue from multimedia rights (''MMR'') plays an important role in many of their budgets. Defendants IMG and Learfield, along with several smaller companies, manage MMR for university athletic programs across the country.

2. Agreements by and among Defendants not to compete, however, have restrained competition in the MMR market, harming the universities that rely on these firms for an important revenue source. These agreements constitute contracts, combinations, or conspiracies in restraint of trade or commerce in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

3. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable relief and other relief to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4.

4. This Court has personal jurisdiction over each Defendant. Both IMG and Learfield transact business within the District of Columbia.

5. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. IMG and Learfield manage MMR for universities throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their MMR management and other services have had a substantial effect on interstate commerce.

6. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. THE DEFENDANTS

7. Defendant IMG, until its 2018 merger with Learfield, was a division of global entertainment firm WME Entertainment Parent LLC (''WME''). IMG provided a variety of services to universities, including trademark licensing, ticketing, and MMR management. In 2017, IMG's U.S. revenue for MMR management was approximately $402 million.

8. Defendant Learfield, until its 2018 merger with IMG, was owned by Philadelphia, Pennsylvania-based private equity firm Atairos Group Inc. (''Atairos''), which is substantially owned by Comcast Corporation. Learfield provided a similar set of services to universities as IMG, including MMR management. In 2017, Learfield's U.S. revenue for MMR management was approximately $406 million.

9. On December 31, 2018, Defendants announced that they completed a merger under which Learfield and IMG had merged into a new company—A-L Tier I LLC (d/b/a Learfield IMG College)—owned, in part, by WME and Atairos.

IV. INDUSTRY BACKGROUND

10. Across the country, over a thousand colleges and universities field men's and women's sports teams to compete in intercollegiate athletics. The majority of these athletic programs are small, with only a few sports and funded primarily by student fees. Many, however, include over a dozen men's and women's teams each, requiring extensive facilities, staffing, and funding.

11. Because of their size, major university athletic programs require substantial budgets, with funding drawn primarily from a handful of key sources, including television rights, ticket revenue, donations, and MMR.

12. Multimedia rights consist of advertising and promotional rights associated with school property and athletic activities. Although the package of rights may vary slightly from deal to deal, MMR management firms typically manage the school's print and digital athletic advertising, signage in stadiums and arenas, game and event sponsorships, promotions, and radio shows. While smaller schools may choose to maintain MMR management in-house, nearly all major university athletic programs use an MMR management firm to manage their MMR.

13. MMR management firms serve several important functions. First, they oversee the general commercialization of a university's athletic rights, including identifying advertising and promotional opportunities, working with different constituencies to secure the most advertising revenue without undermining the interests and values of the university, and performing a variety of back office functions. Second, they assist the university in bringing MMR opportunities to market, such as providing facilities and infrastructure to produce radio shows and funding the construction of new stadium videoboards. Finally, MMR management firms develop and maintain relationships with advertisers.

V. COORDINATION IN THE MMR INDUSTRY

14. Defendants IMG and Learfield have agreed or otherwise coordinated to limit competition between one another

and between themselves and smaller competitors.

15. At times, the coordination between IMG and Learfield has taken the form of joint ventures at specific universities. Under the guise of legitimate business arrangements, these joint ventures further Defendants' interests over schools', denying colleges the benefits of competition with little, if anything, in return.

16. In one such episode, IMG and Learfield provided MMR services through a joint venture that had been created years before. When the university's multimedia rights came up for bid, both IMG and Learfield initially prepared to submit independent bids in competition with each other. Before submissions were made to the school, however, executives of IMG and Learfield agreed not to submit competing bids and instead submitted a joint bid. Absent the competing independent offers anticipated from both IMG and Learfield, the school accepted a joint bid that offered less revenue to the school than at least one of Defendants' planned independent bids.

17. With varying degrees of success, Defendants have also attempted to wield the joint venture structure as a way to co-opt smaller competitors. In one example, as part of a joint venture agreement between IMG and a smaller MMR provider, IMG secured a commitment under which the smaller provider would not bid on any of IMG's schools for over a year. IMG recognized the joint venture's value in removing the smaller provider as a competitor and projected millions in savings from not having to compete. In another example, IMG proposed to another bidder that they each withdraw their bids and submit a joint bid that would be less favorable to the school. In this instance, however, IMG's invitation did not succeed and the other firm ultimately won the bid.

18. Additionally, when IMG and Learfield have unwound established joint ventures at certain universities, the two firms have crafted non-compete agreements that continue to limit competition. As with the joint ventures themselves, these non-competes unreasonably denied schools the benefits of competition. And when one of the two firms wanted to compete, the other quickly moved to suppress the threatening bid, enforcing the agreement. In one example, a then-IMG executive asked Learfield for permission to bid on a Learfield school that was coming up for bid on which Learfield had a non-compete commitment from IMG. Learfield, however, did not consent and the school stayed with Learfield.

19. Even in the absence of a so-called joint venture or non-compete agreement, IMG and Learfield have sought ways to undermine competition. In some cases, an understanding not to compete is employed with an informal policing mechanism. In one such episode, Learfield bid for an IMG school without first receiving permission from IMG. As a result, a then-IMG executive reached out to a Learfield executive requesting that Learfield withdraw its bid. Learfield agreed and withdrew its bid as IMG had requested. The university, without Learfield's offer, signed an agreement with IMG.

20. These efforts to suppress competition also extended to others in the market. For example, Defendants have attempted to craft legal settlements with smaller competitors in ways that limit competition. In an employee dispute with one such competitor, Learfield secured a settlement that precluded the company from bidding on a certain university. And in another employee dispute, Learfield made a failed attempt to agree not to compete with a competitor for one another's MMR staff.

21. Defendants' agreements and attempted agreements not to compete, and to co-opt smaller competitors, reflect a culture of disregard for the antitrust laws and the competitive process. Accordingly, such conduct should be enjoined.

VI. VIOLATIONS ALLEGED

22. The agreements by Defendants not to compete constitute agreements that unreasonably restrain competition in the market for MMR management in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

23. Among other things, Defendants' conduct has and will continue to:

(a) harm the competitive process by suppressing or eliminating competition in MMR management;

(b) reduce the revenue received by universities; and

(c) cause the quality of MMR management to decrease.

24. These agreements are not reasonably necessary to accomplish any allegedly procompetitive goals. Any procompetitive benefits are outweighed by anticompetitive harm, and there are less restrictive alternatives by which Defendants would be able reasonably to achieve any procompetitive goals.

VII. REQUEST FOR RELIEF

25. The United States requests:

(a) that the aforesaid agreements not to compete against each other be adjudged to unreasonably restrain trade and to be illegal under Section 1 of the Sherman Act, 15 U.S.C. §1;

(b) that Defendants be permanently enjoined from engaging in, enforcing, carrying out, or attempting to engage in, enforce, carry out, or renew the agreements in which Defendants are alleged to have engaged, or any other agreement having a similar purpose or effect, in violation of Section 1 of the Sherman Act, 15. U.S.C. § 1;

(c) that Defendants eliminate and cease enforcing all agreements not to compete and be prohibited from otherwise acting to restrain trade unreasonably;

(d) that Defendants be required to institute an antitrust compliance program;

(e) that the United States be awarded costs of this action; and

(f) that the United States be awarded such other relief as the Court may deem just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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Assistant Attorney General for Antitrust.

Bernard A. Nigro Jr. (D.C. Bar #412357),
Deputy Assistant Attorney General for Antitrust.

Patricia A. Bank,
Director of Civil Enforcement.

Owen M. Kendler,
Chief, Media, Entertainment & Professional Services Section.
Lisa A. Scanlon,
Assistant Chief, Media, Entertainment & Professional Services Section.

Dated: February 14, 2019

Adam C. Speegle,
Jeffrey G. Vernon (D.C. Bar #1009690),
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Learfield Communications, LLC, IMG College, LLC* and *A-L Tier I LLC,* Defendants.

Civil Action No.: 1:19-cv-00389
Judge: Emmet G. Sullivan

[PROPOSED] FINAL JUDGMENT

Whereas, Plaintiff, United States of America, filed its Complaint on January _____, 2019, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, by their respective attorneys,

have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, the United States and Defendants agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

And Whereas, the Defendants agree to undertake certain actions and to refrain from engaging in certain forms of communications and joint activities with their competitors;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged, and decreed:

I. JURISDICTION

This Court has jurisdiction over the subject matter and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. *See* 28 U.S.C. § 1331.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Advertiser'' means an advertiser, sponsor, or corporate hospitality client or an agent or representative acting on behalf of an advertiser, sponsor, or corporate hospitality client.

B. ''Agreement'' means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. ''Bid'' or ''Bidding'' means any offer or response to a Request for Proposal, Request for Submission, Request for Information, or any other request, either formal or informal, by a college, university, or athletic conference (including facilities owned or affiliated with such institutions) relating to a contract or other arrangement (including extensions or renewals of any existing contract or other arrangement) for the management, sale, commercialization, or other utilization of Multimedia Rights owned by the college, university, or athletic conference, or their owned or affiliated facilities.

D. ''Communicate,'' ''Communicating,'' and ''Communication(s)'' means to provide, send, discuss, circulate, exchange, request, or solicit information, whether directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written or recorded means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, face-to-face meetings, or social media.

E. ''Competitively Sensitive Information'' means any non-public information of Defendants or any Competitor regarding the purchase or sale of Multimedia Rights, including without limitation non-public information relating to negotiating positions, tactics, or strategy, pricing or pricing strategies, Bids or Bidding Strategies, intentions to Bid or not to Bid, decisions to Bid, whether a Bid was or was not submitted, costs, revenues, profits, or margins.

F. ''Competitor'' means any Person (other than any Defendant) engaged in , or considering engaging in, the business of servicing, marketing, or commercializing Multimedia Rights or any Multimedia Rights contract, agreement, or opportunity. For the avoidance of doubt, colleges and universities are not ''Competitors.''

G. ''Defendants'' mean Learfield, IMG College, and A-L Tier I LLC.

H. ''IMG College'' means IMG College LLC headquartered in Winston-Salem, North Carolina, its successors and assigns (including but not limited to A-L Tier I LLC), and its subsidiaries, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Joint Venture'' means any collaboration, formed by written or oral agreement, created by and among any Defendant and Competitor relating to the management, sale, commercialization, or other utilization of Multimedia Rights or the Bidding for Multimedia Rights.

J. ''Learfield'' means Learfield Communications, LLC, a Delaware limited liability company headquartered in Plano, Texas, its successors and assigns (including but not limited to A-L Tier I LLC), and its subsidiaries, partnerships, joint ventures, and their directors, officers, managers, agents and employees.

K. ''Management'' means all directors, executives, and officers of a Defendant, or any other employee with management or supervisory responsibilities for a Defendant's Multimedia Rights business at or above the level of general manager at a college or university.

L. ''Multimedia Rights'' means the sponsorship and advertising rights of a college or university intercollegiate athletic program, including but not limited to in-venue signage, television advertising, radio advertising, print advertising, digital advertising, and social media advertising.

M. ''Multi-Property Sales'' means the promotion, marketing, or sales of Multimedia Rights in a package that includes more than one college, university, athletic conference, or venue.

N. ''Person'' means any natural person, university, athletic conference, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

III. APPLICABILITY

This Final Judgment applies to IMG College, Learfield, and A-L Tier I LLC and other Persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

IV. PROHIBITED CONDUCT

A. Defendants shall not, directly or indirectly:

1. Communicate with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding;

2. Agree, combine, conspire, or collude with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid;

3. Agree with any Competitor that any Defendant or any Competitor will not Bid for any Multimedia Rights contract, opportunity, or arrangement; or

4. Communicate, offer, invite, propose, encourage, facilitate, or suggest any joint Bid, collaborative Bid, cooperative Bid, or shared Bid with any Competitor.

B. The prohibitions under Paragraph IV.A apply to Defendant's Communicating or agreeing to Communicate through any third-party agent or third-party consultant at Defendants' instruction, direction, or request.

C. Without the prior written consent of the United States in its sole discretion, the Defendants shall not enter into, renew, or extend the term of any Joint Venture or conduct other business negotiations in conjunction with or on behalf of any Competitor relating to the management, sale, commercialization, or other utilization of Multimedia Rights. The Defendants may apply for prior written consent of the United States in its sole discretion for permission to conduct specified categories of collaborations or

sublicensing arrangements that would not reduce the number of Competitors Bidding.

V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendants from Communicating with a college, university, athletic conference, venue, or any other Person (other than a Competitor) seeking to contract for the management, sale, commercialization, or other utilization of such Person's own Multimedia Rights.

B. Nothing in Section IV shall prohibit Defendants from Communicating with an actual or prospective Advertiser.

C. Nothing in Section IV shall prohibit Defendants from Communicating or transacting with their employees, officers, directors, or owners, including for the avoidance of doubt, WME Entertainment Parent and its subsidiaries and Atairos.

D. Nothing in Section IV shall prohibit Defendants, after securing advice of counsel and in consultation with the Antitrust Compliance Officer appointed pursuant to Section VI *infra*, from Communicating with a Competitor concerning the formation of a Joint Venture that would be subject to the approval of the United States under Section IV(C) or a merger or acquisition, including transactions subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

E. Nothing in Section IV shall prohibit Defendants from Communicating with a Competitor concerning Multi-Property Sales.

F. Nothing in Section IV shall prohibit Defendants from Communicating with a Competitor if (i) the Competitor was engaged in a Joint Venture with any Defendant as of July 1, 2018 and the Communications relate solely to the operation of the Joint Venture in which Competitor and the Defendant are engaged; or (ii) the Competitor and Defendant are engaged in a Joint Venture approved by the United States pursuant to Paragraph IV(C) including, in either case (i) or (ii), waiving or terminating any provisions of the applicable Joint Venture agreement. Defendants shall maintain copies of all written or recorded Communications of the type referenced in this Paragraph V(F) for five years or the duration of the Final Judgment, whichever is shorter, following the date of the creation of such Communication, and Defendants shall make such documents available to the United States upon request.

G. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

H. The preceding Paragraphs V(A) through (G) are for the avoidance of doubt and do not create any implications as to the scope or interpretation of Section IV.

VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, each Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five days of a vacancy in a Defendant's Antitrust Compliance Officer position, such Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. The Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion. For the avoidance of doubt, a single Person employed by one Defendant may serve as the Antitrust Compliance Officer for all Defendants.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. at least five years' experience in legal practice, including experience with antitrust matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's direction:

1. within fourteen days of entry of the Final Judgment, furnish to each Defendant's Management a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within fourteen days of entry of the Final Judgment, in a manner to be devised by each Defendant and approved by the United States, provide each Defendant's Management reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief each Defendant's Management on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any Person who succeeds a Person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each Person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that Person's receipt of the Final Judgment, a certification that the Person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to each Defendant's Management that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by the Defendant; and

7. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which a Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Each Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any of the terms and conditions contained in this Final

Judgment, file with the United States a statement describing in detail any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment; and

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and V(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which a Defendant claims is protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

6. file with the United States six months, twelve months, and twenty-four months after entry of this Final Judgment a report describing in detail the steps it has taken to (a) comply with the terms of this Final Judgement and (b) implement the provisions of Section VI.

E. For the avoidance of doubt, the term ''potential violation'' as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If a Defendant acquires a Person in the business of the management, sale, commercialization, or other utilization of Multimedia Rights after entry of this Final Judgment, this Section VI will not apply to that acquired Person and the Management of that acquired Person until 120 days after closing of the acquisition of that acquired Person.

VII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other Persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. to access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; and

2. to interview, either informally or on the record, Defendants officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants; and

3. to obtain from Defendants written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VII shall be divulged by the United States to any Person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendants to the United States, a Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and that Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give that Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar civil action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendants, whether litigated or resolved prior to litigation, Defendants agree to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort,

including in the investigation of the potential violation.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry, except that after seven years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the continuation of the Final Judgment no longer is necessary or in the public interest.

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth below (or such other addresses as the United States may specify in writing to Defendants):

Chief
Media, Entertainment, and Professional Services Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 4000
Washington, D.C. 20530

XII. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

IT IS SO ORDERED by the Court, this __ day of _____, 201__.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

EXHIBIT 1

[Company Letterhead]
[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions against Working with Competitors on MMR Bids*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, DC prohibiting communicating and otherwise working with competitors when bidding on colleges and universities' multimedia rights contracts.

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from communicating with other multimedia rights firms about bidding on RFPs or other responses to colleges and universities seeking multimedia rights management services. The judgment also prevents us from jointly bidding, or seeking to bid jointly, for any multimedia rights contracts with other companies or from forming multimedia rights joint ventures. There are limited exceptions to these restrictions, which are listed in the judgment. The company will provide briefing on legitimate and illegitimate actions. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If you have any questions about the judgment or how it affects your work activities, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

Employee Certification

I, _____ [name], _____ [position] at _____ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

Name:
Date:

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Learfield Communications, LLC, IMG College, LLC, and A–L Tier I LLC,* Defendants.
Civil Action No.: 1:19–cv–00389
Judge: Emmet G. Sullivan

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment against Defendants IMG College (''IMG''), Learfield Communications, LLC (''Learfield''), and A-L Tier I LLC (collectively ''Defendants''), submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 14, 2019, the United States filed a civil antitrust complaint alleging that Defendants agreed or otherwise coordinated to limit competition between themselves and between themselves and smaller competitors. The Complaint alleges those agreements and that coordination unlawfully restrain trade in the multimedia rights (''MMR'') management market under Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to enjoin the Defendants from engaging in similar conduct in the future.

Along with the Complaint, the United States filed a proposed Final Judgment. The proposed Final Judgment prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and, absent approval from the United States, entering into or extending MMR joint ventures. It also requires Defendants to implement an antitrust compliance training program.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Industry Background

Millions of Americans enjoy college sports each year. Advertisers often try to reach college sports fans by advertising during games, promoting their products at college sports events, and sponsoring various aspects of college sports events and venues. Multimedia rights management companies transform

universities' multimedia rights into revenue. Multimedia rights firms do this by selling advertising, promotional, and sponsorship opportunities associated with the universities' sports programs to companies and other groups trying to reach the universities' sports fans. The multimedia rights can include space on videoboards and scoreboards in football stadiums and basketball arenas, space on printed game programs, commercial time during radio broadcasts of games, commercial time during radio and television broadcasts of coaches' shows, promotional contests during games, and various other methods of reaching fans.

B. Coordination in the MMR Industry

The Complaint alleges that IMG and Learfield have agreed or otherwise coordinated to limit competition between one another and between themselves and smaller competitors. At times, the coordination between IMG and Learfield has taken the form of joint ventures at specific universities. Under the guise of legitimate business arrangements, these joint ventures further Defendants' interests over schools', denying colleges the benefits of competition with little, if anything, in return. With varying degrees of success, IMG and Learfield have also attempted to wield the joint venture structure as a way to co-opt smaller competitors. Additionally, when IMG and Learfield have unwound established joint ventures at certain universities, the two firms have crafted non-compete agreements that continue to limit competition.

The Complaint also alleges that, even in the absence of a so-called joint venture or non-compete agreement, IMG and Learfield have sought ways to undermine competition, including employing an informal policing mechanism to enforce an understanding not to compete. Efforts to suppress competition have also extended to employee disputes and legal settlements.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment closely track the relief sought in the Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Defendants and their employees and agents will not impede competition by agreeing not to compete, entering into unapproved joint ventures, or sharing competitively sensitive information with their competitors. The requirements and prohibitions in the proposed Final Judgment will terminate Defendants' illegal conduct, prevent recurrence of the same or similar conduct, and ensure that Defendants establish an antitrust compliance program. The proposed Final Judgment protects competition and consumers by putting a stop to the anticompetitive conduct alleged in the Complaint.

A. Prohibited Conduct

Section IV of the proposed Final Judgement prohibits Defendants from, directly or indirectly, communicating competitively sensitive information related to bidding with any MMR competitor.

Section IV also prohibits Defendants from agreeing with an MMR competitor not to bid, or to bid jointly, on an MMR contract, including invitations or suggestions to bid jointly Paragraph IV(C) outlines a process under which Defendants may seek approval from the United States to form an MMR joint venture, but otherwise prohibits entering into, renewing, or extending the term of any current or future MMR joint venture.

B. Conduct Not Prohibited

The proposed Final Judgment does not prohibit Defendants from undertaking activities necessary to win MMR contracts on their own, selling multimedia rights to advertisers, or creating packages for advertisers to advertise across MMR properties. Paragraph V(A) makes clear that the proposed Final Judgment does not prohibit Defendants from communicating with colleges, universities, athletic conferences, or venues seeking to enter into an MMR contract. Paragraph V(B) confirms Defendants are permitted to communicate with actual or prospective advertisers, and Paragraph V(E) allows Defendants to communicate with a competitor for the purpose of putting together multi-property advertiser packages. Paragraph V(G) confirms that the proposed Final Judgment does not prohibit petitioning conduct protected by the *Noerr-Pennington* doctrine.

Paragraphs V(D) and V(F) permit certain conduct related to joint ventures. Specifically, Paragraph V(D) allows Defendants to have initial discussions with a competitor about the formation of a joint venture that would then be subject to approval by the United States. Paragraph V(F) makes clear that Defendants may communicate with competitors about the operation of a joint venture established on or before July 1, 2018.

C. Antitrust Compliance Obligations

Under Section VI of the proposed Final Judgment, Defendants must designate an Antitrust Compliance Officer who will be responsible for implementing training and antitrust compliance programs and ensuring compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment and ensure that training on the Final Judgment and the antitrust laws is provided to Defendants' management. Section VI also requires Defendants to establish an antitrust whistleblower policy and remedy and report violations of the Final Judgment. Under Paragraph VI(D)(4), Defendants, through their CEO, General Counsel, or Chief Legal Officer, must certify annual compliance with the Final Judgment. This compliance program is necessary in light of Defendants' anticompetitive conduct.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph IX(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph IX(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged was harmed by Defendants' challenged conduct. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face, and as interpreted in light of this procompetitive purpose.

Paragraph IX(C) further provides that, should the Court find in an enforcement

proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph IX(C) provides that in any successful effort by the United States to enforce a Final Judgment against Defendants, whether litigated or resolved before litigation, Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Finally, Section X of the proposed Final Judgment provides that the Final Judgment shall expire ten years from the date of its entry, except that after seven years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgments

The United States and Defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Owen M. Kendler
Chief, Media, Entertainment & Professional Services Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W., Suite 4000
Washington, DC 20530

Under Section VIII, the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking injunctive relief against Defendants' conduct through a full trial on the merits. The United States is satisfied, however, that the relief sought in the proposed Final Judgment will terminate the anticompetitive conduct alleged in the Complaint and more quickly restore the benefits of competition. Thus, the proposed Final Judgment would achieve the relief the United States might have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgments

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*,

152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. *See also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 14, 2019

Respectfully submitted,

Adam C. Speegle
Trial Attorney
U.S. Department of Justice
Antitrust Division
Media, Entertainment, and Professional Services Section
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Washington, DC 20530
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[FR Doc. 2019–03478 Filed 2–27–19; 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—ODVA, Inc.

Notice is hereby given that, on January 31, 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''), ODVA, Inc. (''ODVA'') 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, Hirose Electric Co., Ltd., Tokyo, JAPAN; Diatrend Corporation, Osaka, JAPAN; SAMSON AG, Frankfurt am Main, GERMANY; Analytical

[1] *See also BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

Technology, Inc., Collegeville, PA; Columbus McKinnon Corporation, Getzville, NY; CONTEC CO., LTD., Osaka, JAPAN; Dimetix AG, Herisau, SWITZERLAND; Dynapar Corporation, Gurnee, IL; Gefran S.P.A., Provaglio d'Iseo Brescia, ITALY; Honeywell Process Solutions, Houston, TX; Industrial Network Controls, LLC, Coopersburg, PA; INGENIA–CAT, SL, Barcelona, SPAIN; IVEK Corporation, North Springfield, VT; Leonton Technologies Co. Ltd., New Taipei City, TAIWAN; MKP Co., Ltd., Gyeonggi-do, REPUBLIC OF KOREA; NetTechnix E&P GmbH, Feldkirch, AUSTRIA; Reno Subsystems, Sparks, NV; Rinstrum Pty Ltd., Brisbane, AUSTRALIA; Tecnetics Industries Inc., St. Paul, MN; The Controls Group, Inc. dba Logix, Kirkland, WA; and Volktek Corporation, New Taipei City, TAIWAN, have been added as parties to this venture.

Also, Optoelectronics, Saitama, JAPAN; UNIPULSE Corporation, Tokyo, JAPAN; BF ENTRON Ltd. (British Federal), Kingswinford, UNITED KINGDOM; Criterion NDT, Auburn, WA; Digital Electronics Corporation (INDE), Osaka, JAPAN; EN Technologies Inc., Gyeonggi-do, REPUBLIC OF KOREA; General Electric Energy Division, Pittsburgh, PA; MYNAH Technologies, Chesterfield, MO; PMV Automation AB, Solna, SWEDEN; SKF USA Inc., Landsdale, PA; and Wittenstein SE, Igersheim, GERMANY, have withdrawn as parties to this venture.

In addition, Lumberg Automation has changed its name to Belden Deutschland GmbH, Schalksmühle, GERMANY.

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 ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA 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 February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on April 23, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2018 (83 FR 22288).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–03515 Filed 2–27–19; 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—Space Enterprise Consortium

Notice is hereby given that, on January 31, 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''), Space Enterprise Consortium (''SpEC'') 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, Aerodyne Industries, LLC, Cape Canaveral, FL; Altius Space Machines, Inc., Broomfield, CO; Aurora Engineering, LLC, Potomac, MD; Barnett Engineering & Signaling Laboratories, LLC, Colorado Springs, CO; BEI Precision Systems & Space Company, Inc., Maumelle, AZ; Boarhog, LLC, San Diego, CA; Brandywine Communications, Tustin, CA; Brandywine Photonics LLC, Exton, PA; Carillon Technologies Management Corporation, Alexandria, VA; Control Vision, Inc., Green Valley, AZ; deciBel Research, Inc., Huntsville, AL; Entegra Systems, Inc., Hanover, MD; Escape Communications, Inc., Torrance, CA; Integrity Communications Solutions, Colorado Springs, CO; L3 Technologies, Inc., SSG Division, Wilmington, MA; La Jolla Logic, San Diego, CA; Libration Systems Management, Inc., Albuquerque, NM; LinQuest Corporation, Los Angeles, CA; LoadPath, Albuquerque, NM; Lunar Resources, Inc., Houston, TX; Opterus R&D, Inc., Fort Collins, CO; Optimum Technologies, LLC, Leesburg, VA; Orbit Logic Incorporated, Greenbelt, MD; P3 Technologies, Inc., Jupiter, FL; Platron Manufacturing, Pflugerville, TX; Projects Unlimited, Dayton, OH; Quantum Research International, Huntsville, AL; Space Exploration Technologies Corp., Hawthorne, CA; Space Systems Integration, LLC, Great Falls, VA; Summation Research, Melbourne, FL; Tethers Unlimited, Inc., Bothell, WA; TMC Design Corporation, Las Cruces, NM; USfalcon, Inc., Cary, NC; Valley Tech Systems, Inc., Folsom, CA; Wyle Laboratories, Inc., Lexington Park, MD; and Zodiac Data Systems, Alpharetta, GA, have been added as parties to this venture.

Also, a.i. Solutions, Inc., Los Angeles, CA; Brilligent Solutions, Inc., Fairborn, OH; Electric Drivetrain Technologies, Castle Valley, UT; QuesTek Innovations, Inc., Evanston, IL; Saraniasat, Inc., Los Angeles, CA; Spectrum Laser and Technologies Inc. dba Spectrum AMT, Colorado Springs, CO; and Syscom, Colorado Springs, CO, 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 SpEC intends to file additional written notifications disclosing all changes in membership.

On August 23, 2018, SpEC 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 2, 2018 (83 FR 49576).

The last notification was filed with the Department on November 8, 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. 2019–03523 Filed 2–27–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 21, 2019, the Department of Justice lodged a proposed Partial Consent Decree (''Consent Decree'') with the United States District Court for the District of Massachusetts in the lawsuit entitled *United States, et al.* v. *City of Holyoke, Massachusetts,* Civil Action No. 19–cv–10332. In a Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the City of Holyoke, Massachusetts, violated the Clean Water Act (CWA), 33 U.S.C. 1311 and 1319, by discharging pollutants from its wastewater collection system without authorization and not in compliance with its National Pollutant Discharge Elimination System permit. The Commonwealth of Massachusetts is a Plaintiff-Intervenor in the case. The proposed Partial Consent Decree requires that Holyoke submit a long-term, combined sewer overflow plan by December 31, 2019, with stipulated penalties attached for late submission. Civil penalties are deferred. The Consent Decree is partial in nature because, once the City develops its plan,

the parties intend to negotiate what further steps the City must take regarding the discharges.

The publication of this notice opens a period for public comment on the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *City of Holyoke, Massachusetts,* D.J. Ref. No. 90–5–1–1–11703. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Partial Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Partial Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.50 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2019–03473 Filed 2–27–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 21, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States* v. *Ameren Missouri, et al.,* Civil Action No. 19–231.

The United States filed a Complaint in this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The United States' complaint names Ameren Missouri, Pharmacia LLP, Solutia Inc., and Afton Chemical Corporation as defendants. The complaint requests recovery of oversight and other response costs that the United States incurred in connection with remedial efforts taken in Sauget Area 2, Site P and an order requiring completion of remedial work selected in a Record of Decision for Sauget Area 2 located in Sauget, St. Clair County, Illinois. All four defendants signed the proposed Consent Decree, agreeing to pay all future response costs related to Site P and complete the work, estimated to cost $2.9 million. In return, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA related to this work. In addition, two site owners signed the consent decree agreeing to provide access to the defendants to complete the work.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Ameren Missouri, et al.,* D.J. Ref. No. 90–11–2–06089/6. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $69.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without Appendices B and C (the Record of Decision and Statement of Work), the cost is only $12.50.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–03549 Filed 2–27–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

195th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 195th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on April 10, 2019.

The meeting will take place in C5521 Room 4, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 from 9:00 a.m. to noon and from 1:00 p.m. to approximately 3:30 p.m. The purpose of the open meeting is to set the topics to be addressed by the Council in 2019. Also, the Council members will receive an update from leadership of the Employee Benefits Security Administration (EBSA).

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before April 3, 2019 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW, Washington, DC 20210. Statements also may be submitted as email attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the email. Relevant statements received on or before April 3, 2019 will be included in the record of the meeting. No deletions, modifications, or redactions will be made to the statements received, as they are public records.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations, or others who need

special accommodations, should contact the Executive Secretary by April 3.

Signed at Washington, DC, this 21st day of February, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2019–03463 Filed 2–27–19; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections Requests To Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Works Hours and Safety Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension to the information collection request (ICR) titled, ''Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Works Hours and Safety Standards Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 29, 2019.

ADDRESSES: You may submit comments identified by Control Number 1235–0023, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Melissa Smith, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division (WHD) of the Department of Labor (DOL) administers the Davis-Bacon Act (DBA) and Davis-Bacon Related Acts (DBRA), 40 U.S.C. 3141 *et seq.,* and the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 3701 *et seq.* Regulations 29 CFR part 5 prescribe labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon Act, the Davis-Bacon Related Acts, and labor standards for all contracts subject to the Contract Work Hours and Safety Standards Act. The DBA and DBRA require payment of locally prevailing wages and fringe benefits, as determined by the Department of Labor, to laborers and mechanics on most federally financed or assisted construction projects. The CWHSSA requires the payment of one and one-half times the basic rate of pay for hours worked over forty in a week on most federal contracts involving the employment of laborers or mechanics. The requirements of this information collection consist of: (1) Reports of conformed classifications and wage rates, and (2) requests for approval of unfunded fringe benefit plans.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- 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.

III. *Current Actions:* The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the government contract programs.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Works Hours and Safety Standards Act.

OMB Number: 1235–0023.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, State, Local, or Tribal Government.

Total Respondents: 8,500 Conformance Reports, 18 Unfunded Fringe Benefit Plans.

Total Annual Responses: 8,500 Conformance Reports, 3 Unfunded Fringe Benefit Plans.

Estimated Total Burden Hours: 2,125 hours (Conformance Reports), 18 hours (Unfunded Fringe Benefit Plans).

Estimated Time per Response: 15 minutes (Conformance Report), 1 hour (Unfunded Fringe Benefit Plans).

Frequency: On occasion.

Total Burden Cost (capital/startup): $4,941.

Total Burden Cost (operation/maintenance): $64,727.

Dated: February 25, 2019.

Robert M. Waterman,

Division of Regulations, Legislation and Interpretation.

[FR Doc. 2019–03480 Filed 2–27–19; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4; RNS Pump Testing ITAAC Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 152 and 151 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on January 28, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *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.
- *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 ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated by July 19, 2018 (ADAMS Accession No. ML18200A415).
- *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: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 152 and 151 to COLs, NPF–91 and NPF–92, to SNC. The exemption is required by paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D, to 10 CFR part 52 to allow SNC to depart from Tier 1 information. With the requested amendment, SNC proposed changes to COL Appendix C (and plant-specific DCD Tier 1) to revise Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) related to flow testing of low pressure makeup from the cask loading pit to the reactor coolant system via the normal residual heat removal system (RNS) and RNS pump testing at reduced inventory.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML19003A487.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19003A481 and ML19003A482, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs, NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML19003A483 and ML19003A485, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated July 19, 2018, Southern Nuclear Operating Company requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, Appendix D, as part of license amendment request 18–016, ''RNS Pump Testing ITAAC Changes.''

For the reasons set forth in section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML19003A487, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the request dated July 19, 2018. This

exemption is related to, and necessary for the granting of License Amendment No. 152 [for Unit 3, 151 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML19003A487), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated July 19, 2018 (ADAMS Accession No. ML18200A415), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs, NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 25, 2018 (83 FR 48463). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that SNC requested on July 19, 2018.

The exemptions and amendments were issued on January 28, 2019, as part of a combined package to SNC (ADAMS Package Accession No. ML19003A479).

Dated at Rockville, Maryland, this 25th day of February 2019.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–03482 Filed 2–27–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4, Crediting Previously Completed First Plant and First Three Plant Tests

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 151 and 150 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia. The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on August 3, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about Docket IDs in *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.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by letter dated August 3, 2018 (ADAMS Accession No. ML18215A382).
- *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: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting exemptions from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to Part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 151 and 150 to COLs, NPF–91 and NPF–92, to SNC. The exemptions are required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D, to 10 CFR part 52 to allow SNC to depart from Tier 1 information. With the requested amendment, SNC requires changes to the initial test program (ITP) in the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2* and Tier 2 information and related changes to the VEGP Units 3 and 4 COL and plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

In license amendment request (LAR) 18–019, SNC seeks approval to utilize and evaluate the results of three tests performed in China on new AP1000 power reactor facilities at Sanmen Units

1 and 2, and Haiyang Unit 1, as part of the ITP for SNC's VEGP Units 3 and 4. These tests are used to further establish unique phenomenological performance parameters of certain AP1000 design features beyond testing performed for the Design Certification of the AP600 that will not change from plant to plant. Some of these tests are required only for the first plant and others are required only for the first three plants and thereafter, because of the standardization of the AP1000 design, would not be required as part of the ITP for subsequent plants. ''First plant only'' and ''first three plant only'' tests are defined and listed in AP1000 DCD Revision 19 Tier 2 Section 14.2.5. The requested amendment includes changes to COL Condition 2.D.(2)(a) and plant-specific Tier 1 Section 2.1.3 to credit previously completed first plant only and first three plant only testing performed in China at Sanmen Units 1 and 2, and Haiyang Unit 1, and revise the COL to delete conditions requiring that the following first plant only, and first three plant only tests be conducted on VEGP Units 3 and 4: In-Containment Refueling Water Storage Tank (IRWST) Heatup Test, Reactor Vessel Internals Vibration Testing, and Core Makeup Tank (CMT) Heated Recirculation Tests.

Part of the justification for granting the exemptions was provided by the review of the amendments. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemptions and issued the amendments concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in Sections 50.12, 10 CFR 52.7, and Section VIII.A.4 of Appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18351A351.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18351A344 and ML18351A346, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18351A347 and ML18351A349, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

As noted in this section is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 3, 2018, SNC requested from the Commission an exemption from the provisions of 10 CFR part 52, Appendix D, Section III.B, as part of license amendment request (LAR) 18–019, ''Crediting Previously Completed First Plant and First Three Plant Tests.''

For the reasons set forth in Section 3.2, ''Evaluation of Exemption,'' of the NRC staff's safety evaluation, which can be found in ADAMS under Accession No. ML18351A351, the Commission finds that:

A. The exemption is authorized by law;

B. The exemption presents no undue risk to public health and safety;

C. The exemption is consistent with the common defense and security;

D. Special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. The special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. The exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated August 3, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 151 [for Unit 3, 150 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's safety evaluation (ADAMS Accession No. ML18351A351), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated August 3, 2018, SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COL Nos. NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 25, 2018 (83 FR 48463). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on August 3, 2018.

The exemptions and amendments were issued on January 22, 2019, as part of a combined package to SNC (ADAMS Package Accession No. ML18351A342).

Dated at Rockville, Maryland, this 25th day of February, 2019.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–03481 Filed 2–27–19; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 20, 2019, 2 p.m. (OPEN Portion) 2:15 p.m. (CLOSED Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW, Washington, DC

STATUS: Meeting OPEN to the Public from 2 p.m. to 2:15 p.m. Closed portion will commence at 2:15 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Tribute—Ray W. Washburne
3. Tribure—James Demers
4. Minutes of the Open Session of the December 13, 2018, Board of Directors Meeting

FURTHER MATTERS TO BE CONSIDERED (CLOSED TO THE PUBLIC 2:15 P.M.):

1. Finance Project—Colombia
2. Finance Project—El Salvador
3. Finance Project—Latin America
4. Finance Project—Southeast Asia
5. Finance Project—Global
6. Minutes of the Closed Session of the December 13, 2018, Board of Directors Meeting
7. Reports
8. Pending Projects

CONTACT PERSON FOR MORE INFORMATION: Information on the meeting may be obtained from Catherine F.I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: February 26, 2019.

Catherine Andrade,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2019–03640 Filed 2–26–19; 11:15 am]

BILLING CODE 3210–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Application for Survivor Insurance Annuities; OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced spouses, mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees if there are no qualified survivors of the employee immediately eligible for an annuity. The requirements relating to the annuities are prescribed in 20 CFR 216, 217, 218, and 219.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a survivor annuity the RRB uses Forms AA–17, *Application for Widow(er)'s Annuity;* AA–17b, *Applications for Determination of Widow(er)'s Disability;* AA–18, *Application for Mother's/Father's and Child's Annuity;* AA–19, *Application for Child's Annuity;* AA–19a, *Application for Determination of Child's Disability;* AA–20, *Application for Parent's Annuity,* and electronic Forms AA–17cert, *Application Summary and Certification* and AA–17sum, *Application Summary.*

The on-line automated survivor annuity application (Forms AA–17, AA–18, AA–19, and AA–20) process obtains information about an applicant's marital history, work history, benefits from other government agencies, and Medicare entitlement for a survivor annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review, either Form AA–17cert or AA–17sum, which provides a summary of the information that the applicant provided or verified. Form AA–17cert, *Application Summary and Certification,* requires a tradition pen and ink ''wet'' signature. Form AA–17sum, *Application Summary,* documents the alternate signing method called ''Attestation,'' which is an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of the appropriate form is used. One response is requested of each respondent. Completion of the forms is required to obtain a benefit.

Previous requests for comments: The RRB has already published the initial 60-day notice (83 FR 66323 on December 26, 2018) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Survivor Insurance Annuities.

OMB control number: 3220–0030.

Form(s) submitted: AA–17b, AA–17cert, AA–17sum, and AA–19a.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2(d) of the Railroad Retirement Act, monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s and grandchildren of deceased railroad employees. The collection obtains information needed by the RRB to determine entitlement to and the amount of the annuity applied for.

Changes proposed: The RRB proposes significant changes to Form AA–17b in support of the RRB's Disability Program Improvement Plan (DPIP) to enhance and improve disability case processing and overall program integrity as recommended by the RRB's Office of Inspector General and the Government Accountability Office. Proposed changes to Form AA–17b include the addition of questions regarding the applicant's attempt to go back to work; education and training; additional scheduled medical care; daily activities, including any social and recreational activities and volunteer work; and possible use of a facilitator or attorney to either complete or aid in the completion of the application. Clarification of existing items and other non-burden impacting editorial and formatting changes to make the AA–17b consistent with other DPIP forms enhancements are also being proposed.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–17 Application Process:			
AA–17cert	900	20	300
AA–17sum	2,100	19	665
AA–17b:			
(With assistance)	250	45	188
(Without assistance)	20	55	18
AA–19a:			
(With assistance)	200	45	150
(Without assistance)	15	65	16
Total	3,485		1,337

2. Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042.

Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age, date of retirement, and years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a spouse annuity the RRB uses non-OMB Form AA–3, *Application for Spouse/Divorced Spouse Annuity,* and electronic OMB Forms AA–3cert, *Application Summary and Certification,* and AA–3sum, *Application Summary.*

The AA–3 application process gathers information from an applicant about their marital history, work history, benefits from other government agencies, and Medicare entitlement for a spouse annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review, either Form AA–3cert or AA–3sum, which is a summary of the information that the applicant provided or verified. Form AA–3cert, *Application Summary and Certification,* requires a traditional pen and ink ''wet'' signature. Form AA–3sum, *Application Summary,* documents an alternate signing method called ''Attestation,'' which is an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–3 is used. One response is requested of each respondent. Completion of the form is required to obtain a benefit.

Previous requests for comments: The RRB has already published the initial 60-day notice (83 FR 66324 on December 26, 2018) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Spouse Annuity Under the Railroad Retirement Act.

OMB control number: 3220–0042.

Form(s) submitted: AA–3cert and AA–3sum.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application obtains information supporting the claim for benefits based on being a spouse of an annuitant. The information is used for determining entitlement to and amount of the annuity applied for.

Changes proposed: The RRB proposes no changes to the forms in the information collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
Form AA–3cert (Ink Signature)	6,400	30	3,200
Form AA–3sum (Attestation)	4,600	29	2,223
Total	11,000		5,423

Additional information or comments: Copies of the forms and supporting documents can be obtained from Brian Foster at (312) 751–4826 or *Brian.Foster@RRB.GOV.*

Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Brian Foster,

Clearance Officer.

[FR Doc. 2019–03487 Filed 2–27–19; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85181; File No. SR–CboeBZX–2018–066]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis

February 22, 2019.

On October 11, 2018, Cboe BZX Exchange, Inc. 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 permit the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.

The proposed rule change was published for comment in the **Federal Register** on October 30, 2018.[3] On December 13, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change.

As of January 28, 2019, pursuant to Section 19(b)(2)(D) of the Act,[6] the proposed rule change (SR–CboeBZX–2018–066) was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03469 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84480 (Oct. 24, 2018), 83 FR 54635.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 84816, 83 FR 65194 (Dec. 19, 2018). The Commission designated January 28, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(D).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85180; File No. SR–CboeEDGX–2018–043]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Deemed Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Allow the Post Only Order Instruction on Complex Orders

February 22, 2019.

On October 1, 2018, Cboe EDGX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Post Only order instruction on complex orders that route to its electronic book.

The proposed rule change was published for comment in the **Federal Register** on October 16, 2018.[3] On November 21, 2018, the Exchange filed Amendment No. 1 to the proposal.[4] On November 27, 2018, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On December 14, 2018, the Exchange filed Amendment No. 2 to the proposal.[7] The Commission received no comment letters on the proposed rule change.

As of January 14, 2019, pursuant to Section 19(b)(2)(D) of the Act,[8] the proposed rule change (SR–CboeEDGX–2018–043), as modified by Amendments No. 1 and 2, was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03471 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84393 (October 10, 2018), 83 FR 52264.

[4] The text of Amendment No. 1 is available at *https://www.sec.gov/comments/sr-cboeedgx-2018-043/srcboeedgx2018043-4678696-176565.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 84663, 83 FR 62390 (Dec. 3, 2018). The Commission designated January 14, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] The text of Amendment No. 2 is available at *https://www.sec.gov/comments/sr-cboeedgx-2018-043/srcboeedgx2018043-4778850-176845.pdf.*

[8] 15 U.S.C. 78s(b)(2)(D).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–85184/February 25, 2019]

Order Affirming Order by Delegated Authority Temporarily Suspending and Instituting Proceedings on SR–BOX–2018–24 and Notice of Additional Comment Period for the Proceedings

In the Matter of the BOX Exchange LLC Regarding a Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (File No. SR–BOX–2018–24)

I. Background

On July 19, 2018, BOX Exchange LLC (f/k/a BOX Options Exchange LLC) (''BOX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–BOX–2018–24) to amend the fee schedule on the BOX Market LLC options facility to establish certain connectivity fees and reclassify its high speed vendor feed connection as a port fee. The proposed rule change was published in the **Federal Register** on August 2, 2018.[3] The Commission received one comment letter on the proposal urging the Commission to suspend the proposal and institute proceedings.[4] BOX submitted a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853.

[4] *See* letter to Brent J. Fields, Secretary, Commission, from Tyler Gellasch, Executive Director, The Healthy Markets Association, dated August 23, 2018.

response to comments on September 12, 2018.[5]

On September 17, 2018, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[6] issued an order temporarily suspending the proposed rule change pursuant to Section 19(b)(3)(C) of the Act[7] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change (''Order Instituting Proceedings'').[9] On October 17, 2018, the Commission received an additional comment letter in response to the Order Instituting Proceedings, supporting the decision to suspend and institute proceedings on the proposed fee changes.[10]

On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,[11] the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings. Pursuant to Rule 431(e) of the Commission's Rules of Practice,[12] a notice of intention to petition for review results in an automatic stay of the action by delegated authority. On September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.[13]

On November 16, 2018, the Commission granted BOX's Petition. Further, the Commission discontinued the automatic stay of the delegated action. In addition, the Commission ordered that any party or other person could file a statement in support or in opposition to the action made by delegated authority provided such statement was filed on or before December 10, 2018.[14]

On December 7, 2018, the Commission received a statement from BOX opposing the action made by delegated authority and urging the Commission to lift the suspension and approve the proposed rule change.[15] In its letter, BOX reiterates the arguments from its Petition that its proposed fees are lower than comparable fees charged by other exchanges and are designed to offset costs of maintaining and improving its trading systems.[16] BOX's letter also includes additional statements describing in general terms the types of costs its proposed fees are intended to support. Specifically, BOX states that these may include costs related to connectivity, software and hardware enhancements, software development, quality assurance, technology support, network performance and stability improvements, and third-party data center rental and utilities.[17] On December 10, 2018, the Commission received a second statement from BOX making identical arguments.[18]

On January 2, 2019, the Commission received two additional comment letters further commenting on BOX's proposed connectivity fees and arguing that the Exchange has not provided sufficient information to allow the Commission to assess whether the proposed fees are consistent with the Act.[19]

On January 25, 2019, pursuant to Section 19(b)(2) of the Act,[20] the Commission designated a longer period within which to approve the proposed or disapprove the proposed rule change.[21]

On February 19, 2019, the Commission received another letter from BOX.[22] In its letter, BOX argues that its provision of connectivity services is related to its trading function. BOX asserts that competition for order flow with other exchanges constrains its ability to price its services, including connectivity.[23] Therefore, BOX claims such competition ensures that its proposed fees are reasonable, equitable, and not unfairly discriminatory and do not impose an unnecessary or inappropriate burden on competition.[24] As a result, BOX claims it is unnecessary to provide detailed cost information in order to justify its proposed fees.[25]

II. Discussion

The Commission's Rules of Practice set forth procedures for the review of actions made pursuant to delegated authority. Rule 431(a) provides that the Commission may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–18.[26] For the reasons discussed below, the Commission affirms the temporary suspension of the proposed rule change and the institution of proceedings.

Instituting proceedings and keeping in place the temporary suspension provides a process for the Commission to further consider whether the proposed rule change is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, this approach will allow the Commission to consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that (i) an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; (ii) do not permit unfair discrimination between customers, issuers, brokers, or dealers; and (iii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[27] Accordingly, the Order Instituting Proceedings properly concluded that it was appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the proposed rule change and to institute proceedings to determine whether the proposed rule change should be approved or disapproved in view of the significant legal and policy issues raised by the proposal.[28]

The Commission recognizes the issues and views raised by the commenters

[5] *See* letter to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated September 12, 2018.

[6] 17 CFR 200.30–3(a)(57) and (58).

[7] 15 U.S.C. 78s(b)(3)(C).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018).

[10] *See* letter to Brent J. Fields, Secretary, Commission, from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated October 15, 2018.

[11] 17 CFR 201.430.

[12] 17 CFR 201.431(e).

[13] Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018 (''Petition'').

[14] *See* Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

[15] *See* letter to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated December 7, 2018.

[16] *See id.* at 2–3.

[17] *See id.* at 2.

[18] *See* letter to Brent J. Fields, Secretary, Commission, from Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

[19] *See* letters to Brent J. Fields, Secretary, Commission, from Tyler Gellasch, Executive Director, The Healthy Markets Association, dated January 2, 2019 and Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Carnegie Mellon University, to Brent J. Fields, Secretary, Commission, dated January 2, 2019.

[20] 15 U.S.C. 78s(b)(2).

[21] *See* Securities Exchange Act Release No. 84989 (January 25, 2019), 84 FR 858 (January 31, 2019). The Commission noted that March 30, 2019, is a Saturday and, therefore, the Commission designated March 29, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change.

[22] *See* letter to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated February 19, 2019.

[23] *See id.* at 2.

[24] *See id.*

[25] *See id.* at 3–4.

[26] *See* 17 CFR 201.431(a).

[27] *See* Order Instituting Proceedings, *supra* note 9, at 47948.

[28] *See id.*

and BOX as to the impact of and justification for the proposed fee changes. Instituting proceedings provides an opportunity for additional comment on, and Commission consideration of, these matters, as well as an opportunity for the Commission to more fully assess whether the filing is consistent with the Act.

Further, suspending the filing and instituting proceedings constitutes an interim step in the Commission's consideration of the substantive issues raised by the filing, and does not constitute a final disposition of the proposed rule change. As reflected in the Order Instituting Proceedings, the Commission has not reached any conclusions with respect to the issues involved.[29] To the contrary, the Commission sought additional comment with respect to the concerns raised by the filing,[30] and noted that the institution of proceedings provides the Commission the opportunity to more fully assess the issues raised. In addition, as discussed below, the Commission is providing an additional comment and rebuttal period in this order. This will help the Commission further assess the proposed rule change and inform its ultimate decision as to whether the proposed rule change is consistent with the Act.

As noted above, during the proceedings the Commission will consider whether the proposal satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also believes it is appropriate to provide that (1) interested persons may submit comments related to SR–BOX–2018–24 until 8 days from publication of this order in the **Federal Register** and (2) rebuttal comments may be submitted until 15 days from publication of this order in the **Federal Register**.

For the reasons stated above, it is hereby:

Ordered that the Division's Order Instituting Proceedings by delegated authority is hereby affirmed; and

It is further *Ordered* that interested persons may submit comments related to SR–BOX–2018–24 until 8 days from publication in the **Federal Register**; rebuttal comments may be submitted until 15 days from publication in the **Federal Register**.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03543 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[29] *See id.*

[30] *See id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85183; File No. SR–CboeBZX–2019–009]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Fee Schedule Applicable to Members and Non-Members of the Exchange Pursuant to BZX Rules 15.1(a) and (c)

February 22, 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 11, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members[3] of the Exchange pursuant to BZX Rules 15.1(a) and (c). The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), 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] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform (''BZX Equities'') to add a third Step-Up Tier under footnote 2.[4] The Exchange currently offers two Step-Up Tiers that provide Members with additional ways to qualify for an enhanced rebate where they increase their relative liquidity each month over a predetermined baseline. Under the current Step-Up Tiers, a Member receives a rebate of $0.0030 or $0.0031 per share for qualifying orders which yield fee codes B,[5] V,[6] or Y[7] if the corresponding required criteria is met.

The Exchange now proposes to amend footnote 2 to add a third Step-Up Tier. Under the proposed Step-Up Tier 3, a Member would receive a rebate of $0.0031 per share for their qualifying orders which yield fee codes B, V, or Y where the Member has a Step-Up Add TCV from December 2018 greater or equal to 0.20%. As currently defined in the BZX Equities fee schedule, Step-Up Add TCV means ADAV[8] as a percentage of TCV[9] in the relevant baseline month

[4] The Exchange initially filed the proposed fee change on January 29, 2019 (SR–CboeBZX–2019–003). On business date February 11, 2019, the Exchange withdrew that filing and submitted this filing.

[5] Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of $0.0025 per share.

[6] Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of $0.0020 per share.

[7] Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of $0.0020 per share.

[8] ''ADAV'' means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[9] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

subtracted from current ADAV as a percentage of TCV.[10] Members that achieve the proposed Step-Up Tier must therefore increase the amount of liquidity that they provide on BZX relative to the TCV each month, thereby contributing to a deeper and more liquid market.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

In particular, the Exchange notes that rebates such as that proposed herein have been widely adopted by exchanges,[13] including the Exchange,[14] and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will continue to provide Members with an incentive to reach certain thresholds on the Exchange. Particularly, the proposed Tier rewards a Member's growth pattern since the end of the previous year (2018).

The Exchange believes the proposed Step-Up Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed rebate is reasonable based on the difficulty of satisfying the tier's criteria, including using December 2018 as the predetermined baseline. Furthermore, the Exchange believes that the proposed Step-Up Tier is not unfairly discriminatory as it applies to all members that meet the required criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by adopting an additional pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed change is generally intended to enhance the rebate for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f) of Rule 19b–4[16] 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–CboeBZX–2019–009 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–2019–009. 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

[10] The following demonstrates how Step-Up Add TCV is calculated: In December 2018, Member A had an ADAV of 12,947,242 shares and average daily TCV was 9,248,029,751, resulting in an ADAV as a percentage of TCV of 0.14%; In February 2019, Member A had an ADAV of 24,826,572 and average daily TCV was 7,093,306,325, resulting in an ADAV as a percentage of TCV of 0.35%. Member A's Step-Up Add TCV from December 2018 was therefore 0.21% which makes Member A eligible for the Tier 3 rebate. (*i.e.,* 0.35% (Feb 2019)—0.14% (Dec 2018), which is greater than 0.20% as required by Tier 3).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See e.g.,* NYSE Arca Equities, Fees and Charges, Step Up Tiers.

[14] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1 and 2.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

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–2019–009 and should be submitted on or before March 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03472 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85179; File No. SR–C2–2018–021]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Deemed Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Allow the Post Only Order Instruction on Complex Orders

February 22, 2019.

On October 1, 2018, Cboe C2 Exchange, Inc. (''C2'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Post Only order instruction on complex orders that route to its electronic book.

The proposed rule change was published for comment in the **Federal Register** on October 16, 2018.[3] On November 20, 2018, C2 filed Amendment No. 1 to the proposal.[4] On November 27, 2018, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On December 14, 2018, C2 filed Amendment No. 2 to the proposal.[7] The Commission received no comment letters on the proposed rule change.

As of January 14, 2019, pursuant to Section 19(b)(2)(D) of the Act,[8] the proposed rule change (SR–C2–2018–021), as modified by Amendments No. 1 and 2, was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03466 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84399 (October 10, 2018), 83 FR 52253.

[4] The text of Amendment No. 1 is available at *https://www.sec.gov/comments/sr-c2-2018-021/src22018021-4668149-176527.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 84662, 83 FR 62396 (Dec. 3, 2018). The Commission designated January 14, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] The text of Amendment No. 2 is available at *https://www.sec.gov/comments/sr-c2-2018-021/src22018021-4778855-176825.pdf.*

[8] 15 U.S.C. 78s(b)(2)(D).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85178; File No. SR–CboeBZX–2018–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Deemed Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the WisdomTree Long-Term Treasury PutWrite Strategy Fund, WisdomTree Corporate Bond PutWrite Strategy Fund, WisdomTree International PutWrite Strategy Fund, and WisdomTree Emerging Markets PutWrite Strategy Fund, Each a Series of WisdomTree Trust, Under Rule 14.11(i) (Managed Fund Shares)

February 22, 2019.

On October 9, 2018, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the WisdomTree Long-Term Treasury PutWrite Strategy Fund, WisdomTree Corporate Bond PutWrite Strategy Fund, WisdomTree International PutWrite Strategy Fund, and WisdomTree Emerging Markets PutWrite Strategy Fund, each a series of the WisdomTree Trust.

The proposed rule change was published for comment in the **Federal Register** on October 25, 2018.[3] On December 3, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] On December 7, 2018, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] The Commission received no comment letters on the proposed rule change.

As of January 23, 2019, pursuant to Section 19(b)(2)(D) of the Act,[7] the proposed rule change (SR–CboeBZX–2018–078), as modified by Amendment No. 1, was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03464 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84456 (October 19, 2018), 83 FR 53928.

[4] Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboebzx-2018-078/srcboebzx2018078-4777670-176817.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 63943, 83 FR 84750 (Dec. 12, 2018). The Commission designated January 23, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(D).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85182; File No. SR–CboeEDGX–2018–037]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Deemed Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options on a Pilot Basis

February 22, 2019.

On October 11, 2018, Cboe EDGX Exchange, Inc. 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 permit the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis.

The proposed rule change was published for comment in the **Federal Register** on October 30, 2018.[3] On December 13, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change.

As of January 28, 2019, pursuant to Section 19(b)(2)(D) of the Act,[6] the proposed rule change (SR–CboeEDGX–2018–037) was deemed to have been approved by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03465 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84481 (Oct. 24, 2018), 83 FR 54624.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 84817, 83 FR 65188 (Dec. 19, 2018). The Commission designated January 28, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(D).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15872 and #15873; Alabama Disaster Number AL–00093]

Administrative Declaration of a Disaster for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alabama dated 02/21/2019.

Incident: Severe Weather and Tornado.

Incident Period: 01/19/2019.

DATES: Issued on 02/21/2019.

Physical Loan Application Deadline Date: 04/22/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 11/21/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Elmore

Contiguous Counties:

Alabama: Autauga, Chilton, Coosa, Macon, Montgomery, Tallapoosa

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.000
Homeowners without Credit Available Elsewhere	2.000
Businesses with Credit Available Elsewhere	7.480
Businesses without Credit Available Elsewhere	3.740
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.740
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15872 C and for economic injury is 15873 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 21, 2019.

Linda E. McMahon,

Administrator.

[FR Doc. 2019–03496 Filed 2–27–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15867; Rhode Island Disaster Number RI–00020 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Rhode Island

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Rhode Island, dated 02/15/2019.

Incident: Gas Outage Due to Extreme Cold Temperatures.

Incident Period: 01/21/2019 through 01/29/2019.

DATES: Issued on 02/15/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 11/15/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Newport.

Contiguous Counties:

Rhode Island: Bristol, Kent, Washington.

Massachusetts: Bristol.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.740
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for economic injury is 158670.

The States which received an EIDL Declaration # are Rhode Island, Massachusetts.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 15, 2019.

Linda E. McMahon,

Administrator.

[FR Doc. 2019–03495 Filed 2–27–19; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

SBA Guaranteed Business Loans to Cooperatives

AGENCY: U.S. Small Business Administration.

ACTION: Notice of meeting.

SUMMARY: The Small Business Administration (SBA) Office of Financial Assistance will hold two public forums with members of the general public. The purpose of the public forums is to provide an opportunity for members of the public to present their views to SBA on practical alternatives to satisfying SBA's personal guarantee requirement for small businesses with cooperative ownership. The first public forum will be held in Washington, District of Columbia, and the second public forum will be held in Kansas City, Missouri.

DATES: The Washington, District of Columbia public forum will take place on March 12, 2019, from 11:00 a.m. to 12:30 p.m. Eastern Daylight Saving Time. The Kansas City, Missouri public forum will take place on March 19, 2019, from 11:00 a.m. to 12:30 p.m. Eastern Daylight Saving Time. There will be no telephone call-in available for either public forum.

ADDRESSES: The Washington, District of Columbia public forum will be held at SBA Headquarters, Eisenhower Conference Room, 409 3rd Street SW, Washington, DC 20416. The Kansas City, Missouri public forum will be held at the SBA Kansas City District Office, 1000 Walnut Street, Suite 500, Kansas City, MO 64106. Please note the registration instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas Heou, SBA Office of Financial Assistance, *thomas.heou@sba.gov* or (202) 205–9168.

SUPPLEMENTARY INFORMATION: Pursuant to Sec. 862 of the John S. McCain National Defense Authorization Act for Fiscal year 2019 (Pub. L. 115–232), SBA is holding two public forums to discuss practical alternatives to satisfy SBA's personal guarantee requirement on SBA-guaranteed loans to cooperatives.

This is an opportunity for members of the public to present their views to SBA in person on practical alternatives that would satisfy SBA's personal guarantee requirements. No policy recommendations or views will be offered by SBA at the forums.

All interested parties must register in advance to attend. Attendance at each public forum is limited to the first 50 individuals who register to attend.

Participants interested in attending either public forum may register by email to *thomas.heou@sba.gov* with the email subject line RSVP for [Date] [Location] Public Forum. Registration for each public forum will be on a first come, first serve basis.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2019–03494 Filed 2–27–19; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice: 10687]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments.

DATES: As shown on each of the 61 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony M. Dearth, Directorate of Defense Trade Controls, Department of State, telephone (202) 663–2836; email *DDTCResponseTeam@state.gov.* ATTN: Congressional Notification of Licenses.

SUPPLEMENTARY INFORMATION: Pursuant to section 36(c) and 36(d), and in compliance with section 36(f), of the Arms Export Control Act. Section 36(d) of the Arms Export Control Act (22 U.S.C. 2776) mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in a timely manner in the **Federal Register**, upon transmittal to Congress.

Following are such notifications to the Congress:

April 16, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a license for the transfer of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services to provide training, maintenance, and engineering support on AT–802U and S2R–660 Archangel border patrol aircraft for end use by the Armed Forces of the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 16-081.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and accessories abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of fully automatic machine guns, gun barrels, spare parts, and accessories to Bahrain.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary, Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 16–097.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representative*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and accessories abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of machine guns, spare parts, and accessories to Saudi Arabia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary, Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 16–118.

April 16, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of radios, parts, and components, for integration and installation into military vehicles of the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–009.

August 20, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms accessories and parts abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of upper receiver assemblies with 14.5 inch barrels and lower parts kits to the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–033.

April 16, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms and accessories abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm rifles, suppressors, day optics with night vision settings, night vision monoculars, accessories and training to Saudi Arabia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–054.

June 19, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and accessories abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm rifles, 7.62mm semi-automatic sniper systems, suppressors, grenade launchers, and accessories to Saudi Arabia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–055.

August 20, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms parts and accessories abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of upper receiver assemblies with lower parts kits to the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–056.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, We are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Norway to support the integration, installation, operation, training, testing, O-Level maintenance, and repair of F–135 propulsion systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–068.

May 18, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of 50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Algeria and United Kingdom to support the manufacture of the Falcon III tactical radio systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–070.

July 18, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia, New Zealand, Switzerland, and the United Kingdom to support the manufacture of the Communication, Navigation, and Identification (CNI) Audio Control Electronic (ACE) module for the F–35 Joint Strike Fighter Aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–074.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of technical data and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, and defense services for the GA-ASI Type Certifiable Predator B UAS and prospective payloads to support the assessment, demonstration, and manufacture phase of the Scavenger/PROTECTOR program and the subsequent follow on phases for end-use by the Ministry of Defence, U.K.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–080.

April 16, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel to support the manufacture, integration, installation, operation, testing, maintenance, and repair of the 120mm GPS Phase 1 and (SAL/GPS) Phase 2 Dual Mode Mortar.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17–087.

April 16, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license

amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Italy to support the final assembly and check-out facility of F-35 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-088.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Belgium, Norway and the UK to support the maintenance, repair and overhaul of F-100 aircraft engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-089.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and accessories abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Qatar of fully automatic 5.56mm carbines and commando rifles with accessories, operator's manuals and training.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-092.

July 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and accessories abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 12.7 x 99mm and 7.62 x 51mm machine guns with primary and spare barrels and accessories for Saudi Arabia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-093.

June 27, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the manufacture of the F414-GE-400 engine.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-098.

August 23, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Philippines to support the integration, operation, demonstration, repair, testing, storage, shipping, modification, and maintenance of the Maverick Weapon System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-100.

April 6, 2018

The Honorable Paul D. Ryan. *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Germany and Israel to support the design, development, and manufacture of magazines, grips, new variations of pistols, and other firearm components by Israel.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-102.

June 19, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Poland, Colombia and Chile to support the pre-delivery requirements and post-delivery modification of S-70i helicopters to Chile.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-105.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel to support the Missile Firing Unit and Stunner Interceptor Subsystems of the David's Sling Weapon System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-107.

July 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of automatic rifles, silences, and spare parts to Indonesia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-108.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, We are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 7.62mm automatic machine gun systems, barrels, spare parts, components, technical data, and basic operator maintenance training to Saudi Arabia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-109.

August 1, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including

unclassified technical data, and defense services to Poland to support the manufacture and sustainment of the Patriot M903 Launching Station for the WISLA Patriot Air Defense System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-110.

August 1, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Poland to support the manufacture, integration, verification, and repair of the Mobile Communication Node and Mobile Antenna Mast for WISLA Patriot Air Defense System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-111.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to France and Japan to support development and modification of maritime patrol aircraft for use by the government of Japan.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-117.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the design, development, assembly, engineering integration, and manufacturing of the Advanced Medium Range Air-to-Air Missile (AMRAAM) propulsion sections.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-119.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to support qualification, modification, test, repair, and integration of components for Tamir Interceptor missiles for end-use by the Ministry of Defense for Israel.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations. More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-120.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada and the United Kingdom for the production of Tomahawk Missile Electronic Assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains

business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-121.

August 20, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Jordan to support maintenance and repair of AH-1 F/S Cobra Helicopters for use by the Royal Jordanian Air Force.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-123.

July 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture of the Mk 45 Mod 4 gun system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-130.

April 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of bolt action rifles and semi-automatic rifles of various calibers to Canada for commercial resale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-131.

July 12, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Saudi Arabia for replacement of old machine guns, grenade launchers, lasers, night vision goggles, accessories, and spare parts and components that are in poor condition in their inventory.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-132.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture of Mk 46 Torpedo assemblies and components in Japan.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-133.

April 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of proposed license amendment for the export of defense articles, including technical data, and

defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the operation, training and maintenance of ScanEagle and Integrator Unmanned Aerial System for end use by the Royal Saudi Land Forces.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-134.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to UK for the assembly of GPS Aided Inertial Navigation Systems (GAINS) and Manufacture of the Electronic and Mechanical Components and Parts for GAINS for use in Paveway Weapon Systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-136.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services for the manufacture of control section units and associated electronics modules in the UK for the AIM-120 Advanced Medium Range Air-to-Air Missile for end-use by the United States of America.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-137.

April 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia to support the integration and operation, engineering support, training, testing, maintenance, and repair of AN/PRC-158 software defined tactical radio systems and the Network Planning and Management System for command and control/command, control, communications, computers, intelligence, surveillance and reconnaissance mission applications.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-138.

August 29, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the UAE for infantry-related military training and other advisory assistance for the Presidential Guard Command.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-139.

August 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, we are transmitting certification of a proposed license for export for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, to Sweden for the manufacture of.

The U.S. government is prepared to license the export of these items having

taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-142.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of an amendment of a proposed license for the manufacture abroad of significant military equipment and the export of defense articles, including technical data, defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles including defense services and technical data to Sweden for the manufacture of F404 RM12 gas turbine military aircraft engine parts and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-143.

July 25, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to India to provide P-8I aircraft in-country customer support, logistics support, aircraft health monitoring, engine condition monitoring, flight management database support, in-country aircraft field support, assorted repair and replacement spares, equipment maintenance, and updated technical manuals.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-144.

April 6, 2018

The Honorable Paul D. Ryan, *Speaker of the House of the Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of semi-automatic pistols of various calibers to Canada for commercial resale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-145.

July 31, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to UAE to establish a Patriot Weapon System Additional Equipment and Spares Program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-146.

May 18, 2018

The Honorable Paul D. Ryan, *Speaker of the House Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Japan of defense articles, including technical data, and defense services to support the assembly, disassembly, alignment, test, integration, repair and maintenance of MTS-A Variants.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 17-147.

July 27, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for export of defense articles, including technical data, defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and technical data to Japan to support the installation, testing, maintenance, and repair of Mk15 Close-In Weapon System and the SeaRAM Weapon System for end use by the Japanese Ministry of Defense.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-003.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan, France, and Switzerland to support the design, development, manufacture, and final delivery of completed Boeing 777-300ER New Government Aircraft of Japan for use by the Japan Ministry of Defense.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters.,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-004.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of semi-automatic pistols and rifles, bolt-action rifles to Canada for commercial resale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-007.

June 27, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Italy to manufacture and/or assemble Millimeter Wave Front End Assemblies of the Guidance Section and Control Sections of AGM-88E Advanced Anti-Radiation Guided Missile for the Italian Ministry of Defense.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-008.

July 20, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture of Drogue Rocket Motor and Propellant for end use in aircraft ejection seats for the Japanese Ministry of Defense.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs,

Enclosure: Transmittal No. DDTC 18-010.

July 27, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services to the Netherlands to support the modernization of the Royal Netherlands Air Force fleet of six CH-47F(NL) Chinook Helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-011.

July 31, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representative.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to UAE and UK to support the delivery, fielding, integration, inspection, maintenance, testing, training, and upgrade to Patriot Air Defense System Fire Units, equipment, and spares.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-016.

September 19, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to the Philippines of 9mm semi-automatic pistols to the Philippine Armed Forces.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-019.

July 27, 2018

The Honorable Paul D. *Ryan, Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed export for the manufacture abroad of Significant Military Equipment and the export of defense articles, including technical data and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, defense services, and technical data to Israel to support the installation, testing, maintenance, and repair of Trophy anti-tank active protection systems for end use by the Israel Ministry of Defense.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-020.

August 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to India to support the establishment of two P-8I aircraft training centers for the Indian Navy.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-022.

September 10, 2018

The Honorable Eliot L. Engel, *Committee on Foreign Affairs.*

Dear Mr. Engel:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of automatic 5.56mm rifles to the UAE.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Charles S. Faulkner,

Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-024.

July 11, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 40(g)(2) of the Arms Export Control Act (AECA), we are transmitting a report containing information about a proposed transaction for the export and transfer of certain defense articles to U.S. contract employees engaged in supporting or facilitating ongoing U.S. military operations to counter terrorism in Syria.

The President has determined that the provision of defense articles and defense services to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing U.S. military operations to counter terrorism in Syria is essential to the nation security interests of the United States. Enclosed with this letter are a copy of the President's determination and classified memorandum of justification for the determination.

The transaction that is the subject of the enclosed classified report involves the export of defense articles to Syria to enable the aforementioned recipients to safely support future U.S. counterterrorism operations in Syria. The proposed transaction will be authorized to proceed not less than 15 days after the date of this letter transmitting the report required pursuant to section 40(g)(2) of the AECA.

This report is being provided to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate, as prescribed in section 40 of the AECA.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-031.

July 5, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of semi-automatic pistols to Canada for commercial resale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-035.

June 27, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearm parts and components abroad controlled under Category I of the U.S. Munitions List in amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of .223, .30, and 6.5mm caliber rifled barrel blanks to Canada for commercial re-sale.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 18-036.

August 17, 2018

The Honorable Paul D. Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of fully-automatic rifles to Jordan for the Public Security Directorate.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Mary K. Waters,

Assistant Secretary Legislative Affairs,

Enclosure: Transmittal No. DDTC 18-043.

Anthony M. Dearth,

Chief of Staff, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2019–03516 Filed 2–27–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 10682]

30-Day Notice of Proposed Information Collection: Risk Analysis and Management (RAM)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to April 1, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Lisa M. Farrell, US Department of State, Office of Risk Analysis and Management, 2201 C St. NW, Washington, DC 20520, who may be

reached on 202–663–1037 or at *FARRELLLM1@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Risk Analysis and Management.
- *OMB Control Number:* 1405–0204.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* A/OPE.
- *Form Number:* DS–4184.
- *Respondents:* Potential Contractors and Grantees.
- *Estimated Number of Respondents:* 500.
- *Estimated Number of Responses:* 500.
- *Average Time per Response:* 1 hour 30 minutes.
- *Total Estimated Burden Time:* 750 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected from individuals and organizations is specifically used to conduct screening to ensure that State funded activities do not provide support to entities or individuals deemed to be a risk to national security.

Methodology

The State Department has implemented a Risk Analysis and Management Program to vet potential contractors and grantees seeking funding from the Department of State to mitigate the risk that such funds might benefit entities or individuals who present a national security risk. To conduct this vetting program the Department collects information from contractors, subcontractors, grantees and sub-grantees regarding their directors, officers and/or key employees through mail, fax or electronic submission. The information collected is compared to information gathered from commercial, public, and U.S. government databases to determine the risk that the applying organization, entity or individual might use Department funds or programs in a way that presents a threat to national security. This program will continue as a pilot program consistent with the Department of State, Foreign Operation, and Related Programs Appropriations Act, 2015 (Div. K, Pub. L. 115–141).

Cathy J. Read,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 2019–03510 Filed 2–27–19; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 10685]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Beatriz González: A Retrospective'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Beatriz González: A Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Pérez Art Museum Miami, in Miami, Florida, from on or about April 12, 2019, until on or about September 1, 2019, at the Museum of Fine Arts, Houston, in Houston, Texas, from on or about October 20, 2019, until on or about January 20, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–25 of February 13, 2019.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–03519 Filed 2–27–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10688]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Tiepolo in Milan: The Lost Frescoes of Palazzo Archinto'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that the objects to be exhibited in the exhibition ''Tiepolo in Milan: The Lost Frescoes of Palazzo Archinto,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about April 16, 2019, until on or about July 14, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of

Authority No. 236–25 of February 13, 2019.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–03520 Filed 2–27–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0101]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on November 16, 2018, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2018–0101.

Applicant: National Railroad Passenger Corporation, Mr. Nicholas J. Croce III, PE, Deputy Chief Engineer C&S, 2995 Market Street, Philadelphia, PA 19104.

Amtrak seeks approval to remove all automatic wayside signals on Tracks No. 1, No. 2, and No. 4, at automatic block points between interlockings Paoli, milepost (MP) 19.9 and Park MP 45.5 on Amtrak's Northeast Corridor, Mid-Atlantic Division, Harrisburg Line, Philadelphia to Harrisburg, PA. Automatic Block Signals (ABS) 218, 219, 254, 273, 274, 295, 296, 390, 391, 413, 414, 443, and 494, will be removed with the signal locations remaining in service as block points without wayside signals. These signals will be removed due to Amtrak upgrading the ABS Sections from NORAC Rule 251/261 territory, *cab signals and fixed automatic block signals,* to NORAC Rule 562 territory, *cab signals, without fixed automatic block signals.* In addition to the NORAC Rule 562 upgrades, Amtrak will install Clear Block Signals (C) to existing interlocking signals at Paoli (MP 19.9), Frazier (MP 23.9), Glen (MP 25.3), Downs (MP 32.1), Thorn (MP 35.0), Caln (MP 36.6), and Park (MP 45.5) interlockings through its capital improvement program. Until C signals are installed, movement through the block will be governed by NORAC Rules 550, 554 and 556. Amtrak's overall goal is to eliminate the maintenance and safety concerns associated with the ABS.

The existing automatic train control and Advanced Civil Speed Enforcement System (ACSES) will continue to enforce train speed and positive train stop. ACSES will enforce a positive stop at each interlocking and will also enforce a stop to a train with failed cab signal equipment unless the C signal is displayed allowing the failed train to enter the block.

The reason for removal of the signals in addition to upgrading the ABS Sections is to eliminate maintenance and operation of unnecessary hardware no longer needed, and to reduce delays to trains caused by failures of the signals.

The Southeastern Pennsylvania Transportation Authority and the Norfolk Southern Railway operate on portions of this line as tenants with trackage rights.

The project will begin immediately upon receiving permission for removal and will be completed within five years of receiving the authority to proceed. The project will begin with the section of track from Park to Thorn Interlocking and will progress eastward until completion.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 15, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–03454 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0016]

Petition for Waiver of Compliance

Under part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 30, 2018, the Consolidated Rail Corporation (Conrail) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2019–0016.

Specifically, Conrail seeks relief from the requirements of § 236.109, *Time Releases, Timing Relays, and Timing Devices,* § 236.377, *Approach Locking,* § 236.378, *Time Locking,* § 236.379, *Route Locking,* § 236.380, *Indication Locking,* and § 236.381, *Traffic Locking,* on vital microprocessor-based systems. Many of Conrail's interlockings, control points, and other locations are controlled by solid-state vital

microprocessor-based systems. These systems utilize programmed logic equations in lieu of relays or other mechanical components for control of both vital and non-vital functions. The logic does not change once a microprocessor-based system has been tested and locking tests are documented on installation. Conrail proposes to verify and test signal locking systems and non-configurable timers controlled by microprocessor-based equipment by use of alternative procedures every 4 years after initial baseline testing or program change as follows:

- Verifying the Cyclic Redundancy Check/Check Sum/Universal Control Number of the existing location's specific application logic to the previously-tested version.
- Testing the appropriate interconnection to the associated signaling hardware equipment outside of the processor (switch indication, track indication, searchlight signal indication, approach locking (if external) to verify correct and intended inputs to and outputs from the processor are maintained.
- Analyze and compare the results of the 4-year alternative testing with the results of the baseline testing performed at the location and submit the results to FRA.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 15, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–03451 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Early Scoping for the Capital Metro Orange Line High Capacity Transit Corridor in Austin, Texas

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of early scoping meeting.

SUMMARY: The Federal Transit Administration (FTA) and the Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas issue this early scoping notice to advise other agencies and the public that they intend to conduct early scoping for the Orange Line High Capacity Transit (HCT) Corridor. The Orange Line HCT Corridor is the 21-mile corridor used for Capital Metro's MetroRapid 801 from Tech Ridge to Southpark Meadows. The entire 21-mile corridor is being proposed for HCT dedicated pathways.

This notice invites public input to ongoing planning efforts for the Orange Line HCT Corridor by commenting on the project's purpose and need, the project study area, alternatives being considered, public participation and outreach methods, relevant transportation and community impacts and benefits being considered, potential environmental impacts, and the projected capital and operating costs of the project.

DATES: The public may learn more about the Orange Line HCT Corridor and provide comments at an early scoping meeting scheduled for: Monday, April 8, 2019, 3:00 to 7:00 p.m. Central Time at Austin Central Library, 710 W Cesar Chavez St., Austin, TX 78701.

Capital Metro is also providing notice of this early scoping meeting on Capital Metro's website (*capmetro.org*) and in the following publications:

- Austin American Statesman
- Community Impact Newspaper
- The Villager Newspaper
- The LaPrensa Newspaper

ADDRESSES: Public comments will be accepted at the early scoping meeting. In addition, comments may be sent electronically to: *orangelinefeedback@projectconnect.com.* Comments may be mailed to: Capital Metro Project Connect Office, Orange Line HCT Corridor Comments, 607 Congress Avenue, Austin, TX 78701. All comments are requested by May 24, 2019.

The meeting location is accessible to persons with disabilities. If translation, signing services, or other special accommodations are needed, please contact Courtney Black at (512) 457–1244 via email at *courtney.black@capmetro.org.*

FOR FURTHER INFORMATION CONTACT: Terence Plaskon, FTA, phone: (817) 978–0573, email: *terence.plaskon@dot.gov* or Joe Clemens, AICP, Capital Metro, phone: (512) 369–6515, email: *joe.clemens@capmetro.org.*

SUPPLEMENTARY INFORMATION: The Orange Line HCT Corridor is included in Capital Metro's Project Connect Long-Term Vision Plan. Project Connect developed specifically targeted solutions that address existing service deficiencies and identified HCT investments that would add mobility options for the Central Texas region. Early scoping for the Orange Line HCT Corridor builds on previous Project Connect planning efforts and will examine potential alternatives to provide HCT in the Central Texas region.

The early scoping process is intended to support the formal National Environmental Policy Act (NEPA) scoping process. In addition, early scoping supports FTA planning requirements associated with the

Capital Investment Grant funding program. Capital Metro will comply with all relevant FTA requirements related to planning and project development to help analyze and screen alternatives in preparation for the NEPA process.

Early Scoping

Early Scoping is an optional early step in the NEPA process that precedes formal scoping, which begins when FTA publishes a notice of intent to prepare an environmental impact statement (EIS). FTA encourages the use of early scoping for major planning activities that may receive FTA funding to start the NEPA process during earlier project planning phases. Early scoping is intended to generate public and agency review and comments on the scope of a planning effort within a defined transportation corridor, which helps the agency to determine which alignment variations should receive more focused development to streamline the NEPA process. Early scoping can serve not only to streamline the NEPA process, but also to firmly link transportation planning and NEPA, ensuring that the public and interested agencies are given the opportunity to review and provide comments on the results of planning activities that can then be used to inform the NEPA process.

Project Connect Long-Term Vision Plan

Over the last 30 months, Capital Metro has been conducting the Project Connect System Plan per general guidelines of the Federal Planning and Environmental Linkages (PEL) process. Capital Metro intends to formalize the PEL process with the initiation of early scoping for the Orange Line HCT Corridor, so that the results of the PEL may be considered during the formal NEPA environmental review process.

Under this PEL process, Capital Metro will analyze alternatives that could be considered in an EIS, if warranted. The alternatives analysis will document the project's purpose and need, analyze a range of reasonable, feasible, and prudent alternatives, and identify a locally preferred alternative (LPA) in accordance with the Council on Environmental Quality's and FTA's regulations and guidance for implementing NEPA (40 CFR 1501.2 through 1501.8 and 23 CFR 771.111, respectively), which encourages Federal agencies to initiate NEPA early in their planning processes.

Early scoping allows the scoping process to begin as soon as there is enough information to describe the proposal so that the public and relevant agencies can participate effectively. This notice opens early scoping and invites public and agency involvement with ongoing planning activities and studies for the Orange Line HCT Corridor, including review of the (a) purpose and need, (b) the proposed alternatives, and (c) the potential environmental, transportation, and community impacts and benefits to consider during the NEPA process.

Purpose and Need for the Proposed Project

Capital Metro invites comments on the following preliminary statement of the project's purpose and need: The purpose of the project is to build a north-south transit corridor that provides faster, more reliable travel to, from, and within Central Austin and the surrounding region. The purpose is in response to the following needs in the corridor:

- Growth affecting all travel modes and travel times;
- limited ability to increase roadway width;
- the need to provide better transit options linking affordable housing and jobs;
- the need to connect activity centers and manage future growth with better transit;
- create a central corridor for a better regional transit system; and
- ensure inter-operability between the Orange Line and future corridors.

Potential Alternatives

During the early scoping process, all reasonable alternatives under consideration will be evaluated in terms of their transportation impacts, capital and operating costs, social, economic, and environmental impacts, and technical consideration. Capital Metro will continue to analyze alternative transit modes, alignment, and design options for HCT in the Orange Line Corridor. Capital Metro will seek to identify a broad range of alternatives, consistent with the project's purpose and need. The alternatives will include a No Build Alternative, as well as the following proposed alternatives:

- Baseline Alternative (MetroRapid 801 with transit speed and reliability improvements)
- Dedicated Pathways Bus Rapid Transit (BRT)
- Dedicated Pathways Light Rail Transit (LRT)
- Dedicated Pathways Autonomous Rapid Transit (ART)

At the end of the early scoping process, FTA and Capital Metro anticipate identifying a preferred mode and alignment as the LPA for further evaluation during the formal NEPA process. If an EIS is warranted, FTA will publish a Notice of Intent in the **Federal Register** and the public and interested agencies will have the opportunity to participate in a review and comment period on the scope of the EIS.

Robert C. Patrick,

Regional Administrator, FTA Region VI.

[FR Doc. 2019–03479 Filed 2–27–19; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2015–0221]

Agency Information Collection Activities: Reinstatement of a Previously Approved Collection of Information

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments on our intention to request Office of Management and Budget (OMB) approval to renew an information collection (OMB Control Number 2105–0563) in accordance with the requirements of the Paperwork Reduction Act of 1995. The collection is necessary for administration of the BUILD Transportation Discretionary Grants Program. BUILD Transportation grants support surface transportation infrastructure projects that have a significant local or regional impact. A 60-day **Federal Register** notice was published on December 28, 2018 (83 FR 67484). Since the publication of the 60-day **Federal Register** notice, no comments were received to the Docket (DOT–OST–2015–0221) and therefore no review of comments was required, so none was performed by the Department.

DATES: *Written comments should be submitted by:* April 1, 2019.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online 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:* West Building Ground Floor, Room W–12–140 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: To ensure proper docketing of your comment, please include the agency name and docket number [DOT–OST–2015–0221] at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Howard Hill, Office of the Under Secretary for Transportation Policy, at 202–366–0301 or *BUILDgrants@dot.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 2105–0563.

Title: National Infrastructure Investments or ''BUILD Transportation Discretionary Grants''.

Form Numbers: None.

Type of Review: Revision of a currently approved collection.

Background: The Better Utilizing Investments to Leverage Development or ''BUILD Transportation Discretionary Grants'' program was created as part of the American Recovery and Reinvestment Act of 2009. Through the Recovery Act and nine appropriations acts, Congress provided DOT with funding for ten rounds of competitive grants totaling nearly $5.6 billion for capital and planning investments in surface transportation infrastructure. DOT published a notice in the **Federal Register** on April 27, 2018 announcing the availability of $1.5 billion for the latest round of BUILD Transportation Discretionary Grants (83 FR 18651–01). BUILD recipients provide information to the Government so that the Government may monitor the financial conditions and construction progress of BUILD-supported projects and the effectiveness of those projects using performance measurement metrics negotiated between the recipients and the Government.

This notice seeks comments on the existing information collection, which collects information from grantees that is necessary for grant applications and the reporting requirements agreed to by recipients of TIGER and BUILD Transportation Discretionary Grants.

The reporting requirements for the program is as follows:

In order to be considered to receive a BUILD grant, a project sponsor must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity. The project narrative should include the information necessary for the Department to determine that the project satisfies eligibility requirements as warranted by law. This request renews the existing clearance to cover applications solicited for future National Infrastructure Investments appropriations, solicited in a manner similar to the solicitation for TIGER and BUILD applications.

Following the announcement of a funding award, the recipient and DOT will negotiate and sign a grant agreement. In the grant agreement, the recipient must describe the project that DOT agreed to fund, which is typically the project that was described in the TIGER/BUILD application or a reduced-scope version of that project. The grant agreement must also include a detailed breakdown of the project schedule and a budget listing all major activities that will be completed as part of the project.

During the project management stage, grantees will submit reports on the financial condition of the project and the project's progress. Grantees will submit progress and monitoring reports to the Government on a quarterly basis, beginning on the 20th of the first month of the calendar-year quarter following the execution of a grant agreement, and on the 20th of the first month of each calendar-year quarter thereafter until completion of the project. The report will include an executive summary and sections to show: Project activities; outstanding issues; project schedule; project cost; project funding status; and project quality, along with an SF–425 Federal Financial Report.

This information will be used to monitor grantees' use of Federal funds, ensuring accountability and financial transparency in the TIGER/BUILD program.

Grantees will also submit reports on project performance using certain performance measures that the grantee and the Government select through negotiations. The Grantees will submit a Pre-project Report that will consist of current baseline data for each of the performance measures specified in the grant agreement. The Pre-project Report will include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. The Grantees will submit annual interim Project Performance Measurement Reports to the Government for each of the performance measures. Grantees will submit reports for three years. The Grantees will submit a Project Outcomes Report after the project is completed that will consist of a narrative discussion detailing project successes and/or the influence of external factors on project expectations.

This information collected will be used to analyze project performance.

The Department's estimated burden for this information collection is the following:

Expected Number of Respondents: 850 applications.

Frequency: Quarterly, and Yearly.

Estimated Average Burden per Response: 100 hours for each Application, 1 hour for each Grant Agreement, 6.5 hours for each request for Quarterly Progress and Monitoring Report; 6 hours for each Quarterly Performance Measurement Report.

Estimated Total Annual Burden: 106,325 hours.

The following is detailed information and instructions regarding the specific reporting requirements for each report identified above:

Application

In order to be considered to receive a BUILD Transportation Discretionary Grant, prospective grantees must submit an application to DOT containing a project narrative, as detailed in the Notice of Funding Opportunity, with the following timing and frequency requirements:

○ *Frequency:* Typically, annually, as funding is appropriated by Congress.

○ *Application covers:* Project narrative and information necessary for the Department to determine that the project satisfies eligibility requirements.

○ *Start:* At the opening date of the Notice of Funding Opportunity.

○ *End:* At the closing date of the Notice of Funding Opportunity.

Grant Agreement

BUILD Transportation Discretionary Grant program grantees will negotiate and sign a grant agreement with DOT, with the following timing and frequency requirements:

○ *Frequency:* One time.

○ *Grant agreement covers:* Detailed project scope, schedule, and budget, and terms of agreement between DOT and the grantee.

○ *Start:* After funding announcements have been made by DOT.

○ *End:* At the end of the obligation period, as set by Congress, typically two or three years after funding has been appropriated.

Project Progress and Monitoring Report

BUILD Transportation Discretionary Grant program grantees will submit a Project Progress and Monitoring Report to the Government with the following timing and frequency requirements:

○ *Frequency:* Quarterly.

○ *Report covers:* Previous quarter.
○ *Start:* Upon award of grant.
○ *End:* Once construction is complete.

Grantees use the following structure when preparing this report:

The following list enumerates the required sections in the quarterly progress reports. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.

(a) *Project Overall Status.* This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work described in Attachment A, the schedule described in Attachment B, or the budget described in Attachment C.

(b) *Project Significant Activities and Issues.* This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

(c) *Action Items/Outstanding Issues.* This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project's scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(d) *Project Scope Overview.* The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.

(e) *Project Schedule.* An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, *i.e.,* the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(f) *Project Cost.* An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

(g) *Federal Financial Report (SF–425).* The Federal Financial Report (SF–425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Project Progress and Monitoring Report. The form is available at *http://www.whitehouse.gov/sites/default/files/omb/assets/grants_forms/SF-425.pdf.*

(h) *Certifications.* A certification that the Recipient is in compliance with 2 CFR 200.303 (Internal Controls) and 2 CFR part 200, subpart F (Audit Requirements).

Performance Measurement Reports

BUILD Transportation Discretionary Grant program grantees will submit Performance Measure Reports on the performance (or projected performance)

of the project using the performance measures that the grantee and the Government selected through negotiations with the following timing and frequency requirements:

○ *Frequency:* Quarterly.

○ *Report covers:* Previous year.

○ *Start:* Once, upon award of grant; Annual, for three years after construction completes; once, no later than four years after construction completes.

○ *End:* At the end of agreed upon performance measurement period.

Grantees should use the following structure when preparing this report:

1. Performance Measure Data Collection. The Recipient shall collect the data necessary to report on each performance measure that is identified in the grant agreement. Grantees may select performance measures from the list available at *https://www.transportation.gov/administrations/office-policy/tiger-performance-measurement-guidance-appendix,* according to the type of project.

2. Pre-project Performance Measurement Report. The Recipient shall submit to DOT, on or before the Pre-project Report Date that is stated in the grant agreement, a Pre-project Performance Measurement Report that contains:

(1) Baseline data for each performance measure that is identified in the grant agreement, accurate as of the Pre-project Measurement Date; and

(2) a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each measure.

3. Interim Performance Measurement Reports. After project completion, the Recipient shall submit to DOT on or before each of the periodic reporting dates specified in the Performance Measurement Table in the grant agreement, an Interim Performance Measurement Report containing data for each performance measure that is identified in that table, accurate as of the final date of the measurement period specified in that table. If an external factor significantly affects the value of a performance measure during a measurement period, then in the Interim Performance Measurement Report the Recipient shall identify that external factor and discuss its influence on the performance measure.

4. Project Outcomes Report. The Recipient shall submit to DOT, on or before the Project Outcomes Report Date that is stated in the grant agreement, a Project Outcomes Report that contains:

(1) A narrative discussion detailing project successes and the influence of external factors on project expectations;

(2) all baseline and interim performance measurement data that the Recipient reported in the Pre-project Performance Measurement Report and the Interim Performance Measurement Reports; and

(3) an *ex post* examination of project effectiveness relative to the baseline data that the Recipient reported in the Pre-project Performance Measurement Report.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for OST's performance; (b) the accuracy of the estimated burden; (c) ways for OST to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on February, 22, 2019.

John Augustine,

Director, Office of Infrastructure Finance and Innovation.

[FR Doc. 2019–03511 Filed 2–27–19; 8:45 am]

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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To (1) Amend Rules 7.36 and 7.37 To Add the Designated Market Maker as a Participant for Trading of Exchange-Listed Securities on Pillar; (2) Amend Rule 7.31 To Add Auction-Only Orders and Make Related Changes; (3) Add New Trading Rules Relating to Auctions for Pillar; (4) Make Conforming Amendments to Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and (5) Amend the Preambles on Current Exchange Rules Relating to Their Applicability to the Pillar Trading Platform; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85176; File No. SR–NYSE–2019–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To (1) Amend Rules 7.36 and 7.37 To Add the Designated Market Maker as a Participant for Trading of Exchange-Listed Securities on Pillar; (2) Amend Rule 7.31 To Add Auction-Only Orders and Make Related Changes; (3) Add New Trading Rules Relating to Auctions for Pillar; (4) Make Conforming Amendments to Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and (5) Amend the Preambles on Current Exchange Rules Relating to Their Applicability to the Pillar Trading Platform

February 22, 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 February 8, 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 (1) amend Rules 7.36 and 7.37 to add the designated market maker (''DMM'') as a Participant for trading of Exchange-listed securities on Pillar; (2) amend Rule 7.31 to add Auction-Only Orders and make related changes; (3) add new trading rules relating to auctions for Pillar; (4) make conforming amendments to Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and (5) amend the preambles on current Exchange rules relating to their applicability to the Pillar trading platform. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) amend Rules 7.36 and 7.37 to add the DMM as a Participant for trading of Exchange-listed securities on Pillar; [4] (2) amend Rule 7.31 to add Auction-Only Orders and make related changes; (3) add new trading rules relating to auctions for Pillar; (4) make conforming amendments to Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.31, 7.34, and 7.36; and (5) amend the preambles on current Exchange rules relating to their applicability to the Pillar trading platform.

Currently, the Exchange trades UTP Securities on its Pillar trading platform, subject to Pillar Platform Rules 1P–13P.[5] In the next phase of Pillar, the Exchange proposes to transition trading of Exchange-listed securities to the Pillar trading platform.[6] Once transitioned to Pillar, such securities will also be subject to the Pillar Platform Rules 1P–13P.

As provided for under current Rule 103B, all Exchange-listed securities are assigned a DMM, and when such securities transition to trading on Pillar, the assigned DMM will continue to be responsible for such securities. Accordingly, the Exchange proposes to amend the Pillar rules to add the DMM as a Participant under the Pillar Platform Rules. In addition, because the Exchange conducts auctions for Exchange-listed securities, with this proposed rule change, the Exchange proposes Pillar rules relating to auctions.

Overview

DMM as Parity Participant. Under current Exchange rules, executions in Exchange-listed securities are allocated based on parity by individual participants. Pursuant to Rule 72(c)(ii), the individual participants for purposes of share allocation in such executions are each single Floor broker, the DMM, and orders collectively represented in Exchange systems (referred to in Rule 72(c) as the ''Book Participant''). In Pillar, executions in UTP Securities are similarly allocated based on parity by individual participant, which are currently individual Floor brokers (each, a ''Floor Broker Participant'') and the Book Participant.[7] The Exchange proposes that when Exchange-listed securities transition to Pillar, executions of Exchange-listed securities will continue to be allocated based on parity by individual participants, which will include the DMM assigned to a security as a Participant.

Auctions. Currently, auctions in Exchange-listed securities are governed by a myriad of rules: Rule 15 (Pre-Opening Indications and Opening Order Imbalance Information); Rule 115A (Orders at Opening); Rule 116.40 (''Stopping'' stock on market-on-close orders); Rule 123C (The Closing Procedures); and Rule 123D (Openings and Halts in Trading) (collectively, the ''Current Auction Rules'').

With the transition of Exchange-listed securities to Pillar, the technology underpinning auctions on the Exchange would change, but auctions for Exchange-listed securities would function largely the same as under the Current Auction Rules, subject to specified differences, described below. Specifically, DMMs would continue to be responsible for facilitating openings, reopenings,[8] and the close of trading, as required by Rules 104(a)(2) and (3), and both Limit Orders priced better than the auction price and Market Orders would

[4] ''Participant'' is defined in Rule 7.36(a)(5) to mean, for purposes of parity allocation, a Floor broker trading license (each, a ''Floor Broker Participant'') or orders collectively represented in the Exchange Book that have not been entered by a Floor broker (''Book Participant'').

[5] ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See* Rule 1.1.

[6] The Exchange has announced that, subject to rule approvals, the Exchange will begin transitioning Exchange-listed securities to Pillar on July 15, 2019, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Pillar_Update_NGW.pdf.* The Exchange will publish by separate Trader Update a complete symbol migration schedule.

[7] *See* Rules 7.36 and 7.37.

[8] The Exchange proposes that its Pillar rules would use the term ''reopening'' rather than the hyphenated term ''re-opening.'' Accordingly, new proposed rules would use the term ''reopening,'' and in this filing, the Exchange proposes to replace the term ''re-opening'' with the term ''reopening'' in Rules 7.11 and 7.31(c).

continue to be guaranteed to participate in such auctions.[9] The Exchange also proposes to continue disseminating the same order imbalance information content in advance of auctions on the Exchange.

With the move to Pillar, the Exchange proposes to use standardized Pillar terminology to describe auctions on the Exchange. Accordingly, for Pillar auctions, the Exchange proposes the Rule 7.35 Series (Auctions), which would be set forth under Rule 7P as proposed Rule 7.35 (General), proposed Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions), proposed Rule 7.35B (DMM-Facilitated Closing Auctions), and proposed Rule 7.35C (Exchange-Facilitated Auctions) (collectively, the ''Pillar Auction Rules''), which would replace the Current Auction Rules. The proposed rules would include new terminology specific to the Exchange as well as text that is based on Pillar terminology used by its affiliated exchanges that also operate auctions, NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'').

Except for specified differences described below, the Pillar Auction Rules are substantively based on the Current Auction Rules. However, the text for the Pillar Auction Rules would in many cases be new to the Exchange as compared to the Current Auction Rules.

The Exchange proposes to include a preamble to each of the Current Auction Rules that would provide that each such rule would not be applicable to trading on the Pillar trading platform. The Exchange believes that this preamble will promote transparency in Exchange rules that the Current Auction Rules would not be applicable to auctions on Pillar, and is consistent with preambles on other Exchange rules that specify that such rules are not applicable to trading on the Pillar trading platform.

Orders and Modifiers. Rule 13(c) specifies the Auction-Only Orders currently available for auctions in Exchange-listed securities. Rule 7.31(c) defines Auction-Only Orders that the Exchange accepts in UTP Securities, which are routed to the primary listing market. The Exchange proposes to amend Rule 7.31(c) to specify in Pillar rules the Auction-Only Orders that would be available for Exchange-listed securities to participate in auctions on the Exchange. The Exchange does not propose any differences to the order types that would be available, but proposes to use Pillar terminology to describe these order types.

The Exchange further proposes to amend Rule 7.31 to specify which order types would not be eligible to participate in an auction.

Related Rule Changes. To address how auctions would impact other Pillar rules and to support the transition of Exchange-listed securities to Pillar, the Exchange proposes related rule changes to the following Pillar Platform Rules 1.1 (Definitions), 7.11 (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility), 7.12 (Trading Halts Due to Extraordinary Market Volatility), 7.16 (Short Sales), 7.18 (Halts), 7.32 (Order Entry), 7.34 (Trading Sessions), and 7.36 (Order Ranking and Display).

Updates to Rule Preambles. To support the transition of Exchange-listed securities to trading on Pillar, the Exchange further proposes to amend the preambles to certain current rules to remove references to UTP Securities so that those preambles would provide that ''This Rule is not applicable to trading on the Pillar trading platform.'' [10] There are certain non-Pillar rules that would continue to be applicable to trading of Exchange-listed securities on the Pillar trading platform. For those rules, the Exchange does not propose to amend the existing preamble.

Summary of Substantive Differences

As noted above, when transitioning its trading platform for Exchange-listed securities to Pillar, auctions on the Exchange will continue to function largely the same as under the Current Auction Rules. However, in moving to a new trading platform, the Exchange has identified specified enhancements to how auctions would function. Certain of these enhancements are available because the Exchange proposes to avail itself of existing Pillar functionality available on its affiliated exchanges. Other enhancements are specific to how Exchange auctions would function. These changes are described in greater detail below.

The following provides a high-level summary of certain of the substantive differences that the Exchange proposes to how its auctions would function on Pillar as compared to how auctions function under the Current Auction Rules:

- The Exchange proposes to determine the Official Closing Price for Exchange-listed securities in the same manner as such price is determined on NYSE Arca and NYSE American. Namely, if there is no auction of a round-lot or more, the Official Closing Price would be based on the most recent consolidated last-sale eligible trade, rather than on the most recent last-sale eligible trade on the Exchange.
- The reference price for openings and reopenings would be the most recent consolidated last-sale eligible trade after 9:30 a.m. on a trading day, and if none, the Official Closing Price for the security, rather than the last sale price on the Exchange.[11]
- Auction Imbalance Information made available over the Exchange's proprietary data feeds, which is referred to as Order Imbalance Information under the Current Auction Rules, would be updated every second (rather than in five-minute, one-minute, or five-second intervals as under the Current Auction Rules), would begin for the open at 8:00 a.m. rather than 8:30 a.m., and would continue to be published until the applicable Auction begins. This would be new for the close as currently, the Exchange stops publishing Order Imbalance Information at 4:00 p.m.
- The reference price used for determining whether to publish a pre-opening indication for securities that have limited publicly-available pricing information available would be a derived last sale price.
- Orders with immediate-or-cancel time-in-force instructions would no longer be eligible to participate in opening or reopening transactions and Primary Pegged Orders would no longer be eligible to participate in the close.
- Any Floor broker interest represented orally at the close must include a limit price, and would no longer be permitted to be entered ''at the market,'' and Floor brokers, rather than the DMM, would be responsible for electronically entering the details of such orders for participation in the closing auction, subject to DMM validation. Because, as noted above, the Exchange would continue publishing Auction Imbalance Information until the security closes, any such Floor broker oral interest would be included in the Auction Imbalance Information once it has been electronically entered.

[9] *See* Rules 115A(a) and 123C(7).

[10] The Exchange proposes to make this change to Rules 4, 7, 12, 13, 14, 15, 15A, 19, 51, 52, 55, 56, 60, 61, 62, 67, 70, 71, 79A, 80C, 115A, 116, 123B, 123C, 123D, and 128. The Exchange proposes that paragraph (d) of Rule 123D, which provides for an Initial Listing Regulatory Halt, would continue to be applicable. Accordingly, the preamble for that rule would provide ''[e]xcept for paragraph (d), this Rule is not applicable to trading on the Pillar trading platform.''

[11] All times in the Pillar Auction Rules are Eastern Times. The Exchange proposes to amend Rule 1.1(d), the definition of Core Trading Hours, to add that ''[a]ll times in the Pillar Platform Rules are Eastern Time.'' With this proposed amendment, the Exchange proposes that the remaining Pillar rules would not repeat the term ''Eastern Time'' next to time references and proposes to delete references to that term in Rule 7.34.

• The Exchange would publish its Regulatory Closing Imbalance, referred to as the Mandatory MOC/LOC Imbalance Publication under the Current Auction Rules, at the specified time, regardless of whether a security is halted at that time.

• During a halt or pause in Exchange-listed securities, orders not eligible to participate in the reopening would be cancelled rather than kept on the Exchange Book.

• If the Exchange facilitates an Auction, such auction would continue to be subject to price limitations and not all orders would be guaranteed to participate, as provided for under the Current Auction Rules, but the Exchange would determine how to price such auction based on functionality available for electronic auctions on NYSE Arca and NYSE American and will apply extension logic for reopenings after a trading pause.

Proposed Amendments to Rule 1.1 (Definitions)

To support DMMs and auctions on Pillar, the Exchange proposes to amend Rule 1.1 of the Pillar Platform Rules to include additional definitions.

First, the Exchange proposes to define the terms ''Designated Market Maker,'' ''DMM,'' and ''DMM unit'' in proposed Rule 1.1. Specifically, the term ''DMM'' would mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. This proposed rule text is based on current Rule 2(i) without any differences. The term ''DMM unit'' would mean a member organization or unit within a member organization that has met the requirements of Rules 98 and 104. This proposed rule text is based on the first sentence of Rule 2(j) without any differences. The Exchange does not propose text based on the second sentence of Rule 2(j) because the Pillar Platform Rules do not use the term ''DMM organization'' or ''DMM member organization.''

Second, the Exchange proposes to define the term ''Direct Listing'' to mean a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual. This type of listing is currently referenced in Rule 15(c)(1)(D) and Rule 104(a)(2) in connection with obligations relating to the opening transaction for such listings. As discussed below, the Exchange proposes to move text relating to that type of listing from those rules to the Pillar Auction Rules and believes that it would promote clarity and transparency in Exchange rules to use a single defined term to reference this type of listing. The Exchange proposes to use the term ''Direct Listing'' as this is how this type of listing has been described publicly, and therefore is a familiar term to member organizations and the public.

Third, the Exchange proposes to define the term ''Initial Public Offering'' or ''IPO'' as having the same meaning as that term is used in Section 12(f)(1)(G) of the Act. The term ''initial public offering'' is currently referenced in Rule 15(c)(1)(B) and the Exchange proposes to use this term in more than one place in the Pillar Auction Rules. The Exchange believes it would promote clarity and transparency to include this definition in Exchange rules. The Exchange further believes that the cross reference to Section 12(f)(1)(G) of the Act provides clarity of the scope of the term IPO as used in Exchange Pillar rules.

Finally, the Exchange proposes to add the term ''Official Closing Price'' to Rule 1.1. Rule 123C(1)(e) currently defines the term ''Official Closing Price.'' For Pillar, similar to NYSE Arca and NYSE American, the Exchange proposes to include that definition in Rule 1.1 rather than the Pillar Auction Rules. The Exchange further proposes that the Exchange's proposed definition of Official Closing Price would be based on the NYSE Arca Rule 1.1 and NYSE American Rule 1.1E definitions of Official Closing Price rather than the Rule 123C(1)(e) definition of that term.

The NYSE Arca definition has four substantive differences from the current NYSE Rule 123C(1)(e) definition (the NYSE American definition has three substantive differences from the current NYSE definition).

• First, the NYSE Arca definition provides for how the Official Closing Price is determined for a security listed on NYSE Arca that is a Derivative Securities Product, which is a defined term on NYSE Arca that has the same meaning as the term ''Exchange Traded Product'' under Exchange Rules, and that has not had a closing auction of one round lot or more on a trading day.[12] Because the Exchange now has rules permitting listing of Exchange Traded Products,[13] the Exchange proposes to include text based on NYSE Arca Rule 1.1(ll)(1)(B) in proposed Rule 1.1(s)(1)(B). With this proposed difference, for Exchange Traded Products that list on the Exchange, the Exchange would determine an Official Closing Price for such securities in the same manner as determined by NYSE Arca for such securities.

• Second, under NYSE Arca Rule 1.1(ll)(1)(C) and NYSE American Rule 1.1E(gg)(2)(C), if NYSE Arca or NYSE American cannot determine the Official Closing Price under subparagraphs (A) or (B) of those Exchange's respective rules, the Official Closing Price will be the most recent consolidated last-sale eligible trade during Core Trading Hours on that trading day. By contrast, under NYSE Rule 123C(1)(e)(i), if the Exchange does not have a closing transaction of a round lot or more, the Official Closing Price will be the most recent last-sale eligible trade in such security on the Exchange on that trading day. The Exchange proposes that on Pillar, the Exchange will follow the NYSE Arca and NYSE American manner of determining the Official Closing Price if there is no closing transaction of a round lot or more. As proposed, if there is not a closing auction of a round lot or more, the Official Closing Price would be the most recent consolidated last-sale eligible trade during Core Trading Hours on that trading day. The Exchange believes that this proposed substantive difference to Exchange rules will promote consistency in how an Official Closing Price is determined across affiliated exchanges, and is more likely to represent a recent valuation in a security if an exchange other than NYSE reports a last-sale eligible trade at a later time than the Exchange.

• Third, current Rule 7.31(a)(1)(B)(i) provides that the Exchange would use the Official Closing Price for purposes of determining Trading Collars for Market Orders. For UTP Securities, the official closing price as determined by the primary listing market is used as the Official Closing Price for this purpose. Proposed Rule 1.1(s)(5) is based on NYSE Arca Rule 1.1(s)(5) and NYSE American Rule 1.1(gg)(5) and would specify that the Exchange would use the official closing price of the primary listing market for purposes of Trading Collars for Market Orders under Rule 7.31(a)(1)(B)(i).

• Finally, NYSE Arca Rule 1.1(ll) and NYSE American Rule 1.1(gg) provide that an Official Closing Price may be adjusted to reflect a corporate action or a correction to a closing price, as disseminated by the primary listing market for the security. Proposed Rule 1.1(s)(6) is based on these NYSE Arca and NYSE American rules and would specify that the Exchange would similarly adjust an Official Closing Price to reflect a corporate action in a security or a correction to a closing price.

[12] *See* Rule 1.1(i) (defining the term ''Exchange Traded Product'' to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act).

[13] *See* Rules 5P and 8P.

The Exchange also proposes non-substantive differences to Rule 1.1 to re-number the existing definitions so that the above-described new definitions can be included in alphabetical order in Rule 1.1. The Exchange also proposes a non-substantive amendment to Rule 1.1(q) (proposed to be Rule 1.1(t)) to fix a typographical error to add a quotation mark after the term ''Best Offer'' in the last sentence of that definition.

Proposal To Add the DMM as a Participant Under Pillar Platform Rules

As noted above, once Exchange-listed securities transition to Pillar, such securities will be subject to the Pillar Platform Rules, including Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution and Routing). Accordingly, orders in Exchange-listed securities will be eligible for Setter Priority, as described in Rule 7.36(h) and will be allocated on parity, as provided for in Rule 7.37(b).

Because DMMs are not assigned to UTP Securities, Rules 7.36 and 7.37 do not currently address the DMM participation in allocation. To support the transition of Exchange-listed securities to Pillar, the Exchange proposes to amend these rules to reflect that the DMM would be included in the allocation process for securities assigned to that DMM.

First, the Exchange proposes to amend Rule 7.36(a)(5), which defines the term ''Participant,'' to add the DMM to this definition. The proposed new rule would provide that (new text underlined):

"Participant" means for purposes of parity allocation, a Floor broker trading license (each, a "Floor Broker Participant"), the DMM assigned to the security ("DMM Participant"), or orders collectively represented in the Exchange Book that have not been entered by a Floor broker or DMM ("Book Participant").

This proposed rule text is based in part on Rule 72(c)(ii), which provides that the DMM constitutes an individual participant for purposes of share allocation in a security that is assigned to such DMM.

Next, the Exchange proposes to amend Rule 7.37(b)(7), which is currently designated as ''Reserved,'' to delete that term and add: ''*DMM Participant Allocation.* An Allocation to the DMM Participant will be allocated to orders that comprise the DMM Participant by working time.'' With this proposed rule change, if a DMM Participant has more than one order at a price and receives an allocation, that parity allocation would be allocated among the DMM orders by working time associated with such orders. This proposed rule text is new for Pillar and uses Pillar terminology to provide transparency regarding how multiple orders from the DMM Participant would be allocated among those orders.

At this time, the Exchange is not proposing to move other rules governing DMMs to the Pillar Platform Rules, such as Rules 98 (Operation of a DMM Unit), 103 (Registration and Capital Requirements of DMMs and DMM Units), 103B (Security Allocation and Reallocation), and 104 (Dealings and Responsibilities of DMMs). Accordingly, these current rules, and any other current rule that does not include a preamble that such rule is not applicable to trading on the Pillar trading platform, will continue to be applicable to DMMs once Exchange-listed securities transition to the Pillar trading platform.

Proposed Amendments to Rule 7.31 (Orders and Modifiers)

Rule 7.31 sets forth the orders and modifiers that are available for trading on Pillar on the Exchange. Because the Exchange currently trades only UTP Securities, this rule does not address order types that would participate in an auction on the Exchange. For example, Rule 7.31(c) defines Auction-Only Orders, but that rule currently provides that these orders are only to be routed. The Exchange proposes to amend Rule 7.31 to: (1) Provide that Auction-Only Orders would be available for auctions on the Exchange for Exchange-listed securities; (2) add additional Auction-Only Orders that are based on functionality currently available under Rules 13 and 70.25; and (3) specify which existing orders and modifiers would not be eligible to participate in an auction.

Auction-Only Orders for Auction-Eligible Securities.[14] Under current Rule 7.31(c), which defines Auction-Only Orders, if the Exchange receives an Auction-Only Order in a UTP Security, the Exchange routes such order directly to the primary listing market for that security. Therefore, Rule 7.31(c) currently describes an Auction-Only Order as a Limit Order or Market Order that is only to be routed pursuant to Rule 7.34.

The Exchange proposes to amend Rule 7.31(c) to reflect the difference between Auction-Only Orders for Exchange-listed securities, which will be auction eligible when they transition to Pillar, and Auction-Only Orders for UTP Securities, which are routed to the primary listing market. As proposed, Rule 7.31(c) would provide that an Auction-Only Order is a Limit Order or Market Order that is to be traded only in an auction pursuant to the Rule 7.35 Series (for Auction-Eligible Securities)[15] or routed pursuant to Rule 7.34 (for UTP Securities). This proposed rule text is based on NYSE Arca Rule 7.31–E(c) and NYSE American Rule 7.31E(c) with a non-substantive, clarifying difference to specify that such orders in Auction-Eligible Securities would be traded in an auction pursuant to the Rule 7.35 Series and that such orders in UTP Securities would be routed pursuant to Rule 7.34.

This proposed amendment would also add to the definition of Auction-Only Orders additional order types that are designated for an auction and that are currently available for Exchange-listed securities. First, because d-Quotes currently can be designated to exercise discretion only in auctions, the Exchange proposes to include in the definition of Auction-Only Orders how

[14] *See* discussion *infra* regarding proposed Rule 7.35(a) and definitions for purposes of Auctions, including the terms ''Core Open Auction,'' ''Trading Halt Auction,'' ''Closing Auction,'' and ''Auction-Eligible Securities.''

[15] *See* discussion *infra* regarding the proposed Rule 7.35 Series.

discretionary instructions would function on Pillar auctions.[16] Second, the Exchange proposes to add the Closing Imbalance Offset Order to the Pillar rules. The Exchange also proposes non-substantive differences to distinguish Auction-Only Orders that would participate in the Core Open and Trading Halt Auctions from Auction-Only Orders that would participate in the Closing Auction.[17]

Core Open and Trading Halt Auctions. Proposed Rule 7.31(c)(1) would describe the Auction-Only Orders designated for an opening or reopening auction that the Exchange would accept before the Core Trading Session begins (for the Core Open Auction) or during a halt or pause (for a Trading Halt Auction). As proposed, any quantity of such orders that are not traded in the designated auction would be cancelled. This proposed text does not introduce new functionality, but uses Pillar terminology relating to auctions. The Exchange proposes to move the definitions for a Limit-on-Open Order (''LOO Order'') and a Market-on-Open Order (''MOO Order'') as subparagraphs under Rule 7.31(c)(1) without any changes.[18]

Currently, under Rule 70.25(a)(ii), a d-Quote can include an instruction to participate in the opening transaction only, meaning that the discretionary instructions for an e-Quote would be live for the opening transaction only.[19] The Exchange proposes to replicate this d-Quote behavior on Pillar without any substantive differences and proposes to describe it as an Auction-Only Order that would be called the ''Opening D Order.''

Proposed Rule 7.31(c)(1)(C) would provide that an Opening D Order is a Limit Order to buy (sell) with an instruction to exercise discretion in the Core Open Auction or Trading Halt Auction up (down) to a designated undisplayed price. Just as d-Quotes are available only to Floor brokers, proposed Rule 7.31(c)(1)(C)(i) would provide that an Opening D Order may be entered by a Floor broker only. Because an Opening D Order would cancel if it does not trade in the designated auction, this order type would not be eligible to trade in continuous trading. This proposed rule text is based on current functionality without any substantive differences, but uses Pillar terminology.

Because an Opening D Order could be entered for a UTP Security, proposed Rule 7.31(c)(1)(C)(ii) would provide that based on the instruction of the Floor broker, an Opening D Order in a UTP Security would be routed to the primary listing market as either a MOO or a LOO Order. This is consistent with the treatment of Auction-Only Orders today in UTP securities, which are routed to the primary listing market for that security.

Closing Auctions. Proposed Rule 7.31(c)(2) would describe the Auction-Only Orders designated for a closing auction and proposes that the Exchange would begin accepting such Auction-Only Orders when it begins accepting orders for a trading day as provided for in Rule 7.34(a)(1).[20] The Exchange proposes to move the definitions for a Limit-on-Close Order (''LOC Order'') and a Market-on-Close Order (''MOC Order'') as subparagraphs under Rule 7.31(c)(2) without any changes.[21]

Similar to d-Quotes for opening transactions, Rule 70.25(a)(ii) provides that a d-Quote can include an instruction to participate in the closing transaction only, meaning that the discretionary instructions for an e-Quote would be live only for an auction. Because the discretionary instructions are live only for an auction, the Exchange proposes to describe this functionality for Pillar as part of Auction-Only Orders. As proposed, a Closing D Order would be defined in Rule 7.31(c)(2)(C) as a Limit Order to buy (sell) with an instruction to exercise discretion in the Closing Auction up (down) to a designated undisplayed price. As with d-Quotes, proposed Rule 7.31(c)(2)(C)(i) would provide that a Closing D Order may be entered by a Floor broker only.

Proposed Rule 7.31(c)(2)(C)(ii) would provide that, on arrival, a Closing D Order would be processed as a Limit Order and may trade or route prior to the Closing Auction. This proposed rule text is based on how a d-Quote with instructions to participate in the closing transaction only currently operate, as such d-Quotes are eligible to trade during continuous trading prior to the closing transaction as a straight e-Quote and the discretionary instructions of such a d-Quote are active only for an auction.

Proposed Rule 7.31(c)(2)(C)(iii) would provide that based on the instruction of the Floor broker, a Closing D Order in a UTP Security would be routed to the primary listing market as either a MOC or LOC Order. This is consistent with the treatment of Auction-Only Orders today in UTP securities, which are routed to the primary listing market for that security.

To complete the list of Auction-Only Orders that would be available on the Exchange when it introduces auctions on Pillar for Exchange-listed securities, the Exchange proposes to amend Rule 7.31(c) to include the proposed Closing Imbalance Offset Order (''Closing IO Order''), which is based on the Closing Offset Order (''CO Order'') currently available for Exchange-listed securities.[22] Proposed Rule 7.31(c)(2)(D) would provide that a Closing IO Order is a Limit Order to buy (sell) in an Auction-Eligible Security that is to be traded only in a Closing Auction.

Proposed Rule 7.31(c)(2)(D)(i) would further provide that a Closing IO Order would participate in a Closing Auction only if: (i) There is an Unpaired Quantity (a term that will be defined in proposed Rule 7.35(a), described below) in the security on the opposite side of the market from the Closing IO Order after taking into account all other orders eligible to trade at the auction price; and (ii) the limit price of the Closing IO Order to buy (sell) is at or above (below) the price of the Closing Auction. This text is based on Rule 13(c)(1)(i) and (ii), which describe when a CO Order may participate in the Closing Auction, with changes to reflect Pillar terminology.

Proposed Rule 7.31(c)(2)(D)(ii) would provide that the working price of a Closing IO Order to buy (sell) would be adjusted to be equal to the price of the Closing Auction, provided that the working price of the Closing IO Order would not be higher (lower) than its limit price. This proposed text would add further specificity to the operation of Closing IO Order and is based on Rule 13(c)(1)(iii) which provides that a CO Order will participate in the Closing Auction if its limit price is at or within the price of the Closing Auction. The Exchange proposes to specify the ranking and allocation of the proposed Closing IO Orders in proposed Rule 7.35B, described below.

[16] *See* Rule 70.25(a)(ii).

[17] As described below, the Exchange proposes to define the terms Core Open Auction, Trading Halt Auction, and Closing Auction in proposed Rule 7.35(a).

[18] Current Rule 7.31(c)(1) relating to LOO Orders would be renumbered as Rule 7.31(c)(1)(A) and current Rule 7.31(c)(2) relating to MOO Orders would be renumbered as Rule 7.31(c)(1)(B).

[19] The Exchange has filed a separate proposed rule change to establish D Orders on the Pillar trading platform, which are based on d-Quotes under Rule 70.25. *See* Securities Exchange Act Release No. 84806 (December 12, 2018), 83 FR 64913 (December 18, 2018) (SR–NYSE–2018–52) (Notice of filing).

[20] Rule 7.34(a)(1) provides that the Exchange will begin accepting orders 30 minutes before the Early Trading Sessions begins at 7:00 a.m.

[21] Current Rule 7.31(c)(3) relating to LOC Orders would be renumbered as Rule 7.31(c)(2)(A) and current Rule 7.31(c)(4) relating to MOO Orders would be renumbered as Rule 7.31(c)(2)(B).

[22] *See* Rule 13(c)(1).

Orders Not Eligible to Participate in an Auction. The Exchange proposes that unless otherwise specified, orders and modifiers described in Rule 7.31 would be eligible to participate in an Auction. The Exchange proposes that the following order types would not be eligible to participate in an Auction:

• Rule 7.31(b)(2) would be amended to provide that a Limit Order designated IOC would not be eligible to participate in any Auctions. This proposed rule is based on NYSE Arca Rule 7.31–E(b)(2) and NYSE American Rule 7.31E(b)(2) with a non-substantive difference to capitalize the term ''Auctions,'' which is a defined term described below in proposed Rule 7.35(a)(1). This proposed rule change would be a substantive difference on the Exchange, as currently, specified orders designated IOC are eligible to participate in an opening or reopening auction.[23] The Exchange believes that the proposed Pillar rule would standardize the treatment of Limit IOC Orders across affiliated exchanges. In addition, the Exchange believes that cancelling such orders on arrival rather than holding them for an auction is consistent with the instruction of such orders to cancel if not immediately executable.

• Rule 7.31(d)(2) would be amended to provide that Non-Displayed Limit Orders would not participate in any Auctions. This proposed rule is based on NYSE Arca Rule 7.31–E(d)(2) and NYSE American Rule 7.31E(d)(2) with a non-substantive difference to capitalize the term Auctions. This proposed rule is also consistent with Rule 13(d)(2)(D), which provides that Non-Displayed Reserve Orders shall not participate in manual executions, which means that they are not eligible to participate in any auctions under current rules.

• Rule 7.31(d)(3) would be amended to provide that Mid-Point Liquidity Orders (''MPL Order'') would not participate in any Auctions. This proposed rule is based on NYSE Arca Rule 7.31–E(d)(3) and NYSE American Rule 7.31E(d)(3) with a non-substantive difference to capitalize the term Auctions. This proposed rule text is also based in part on Rule 13(d)(1)(A), which provides that MPL Orders are not eligible for openings, reopenings, or closing transactions.

• Rule 7.31(e)(2)(A) would be amended to provide that ALO Orders may participate in Auctions, but the ALO designation would be ignored and that an ALO Order that has not traded in an Auction would be assigned a working price and display price pursuant to Rule 7.31(e)(2)(B). This proposed rule is based on NYSE Arca Rule 7.31–E(e)(2)(A) with a non-substantive difference to capitalize the term Auction. This proposed rule text is also based in part on Rule 13(e)(1)(A), which provides that an order designated ALO may participate in openings, reopenings, or closings, but the ALO designation shall be ignored.

• Rule 7.31(h)(4) would be amended to provide that Non-Displayed Primary Pegged Orders would not participate in any Auctions. This proposed rule is based on NYSE American Rule 7.31E(h) with a non-substantive difference that on the Exchange, this text would be specific to Non-Displayed Primary Pegged Orders, which is the only type of non-displayed Pegged Order available on the Exchange. This proposed rule is also based in part on how pegging interest currently functions on the Exchange. Currently, because pegging interest is an e-Quote, it may be designated as a Non-Display Reserve e-Quote pursuant to Rule 70(b)(ii) and (f)(ii). In such case, this non-displayed pegging interest would not participate in openings, re-openings, or closings. Accordingly, this proposed rule text is based on current functionality.

• Rule 7.31(i)(2) would be amended to provide that orders marked with a Self-Trade Prevention (''STP'') modifier would not be prevented from interacting during any Auction. This proposed rule is based on the last sentence of NYSE Arca Rule 7.31–E(i)(2) and the last sentence of NYSE American Rule 7.31E(i)(2) with a non-substantive difference to capitalize the term Auction. This proposed rule text is also based on the fourth paragraph of Rule 13(f)(3)(B), which provides that STP modifiers will not be active and will be ignored for opening, re-opening, and closing transactions.

The Exchange proposes two additional changes to Rule 7.31. First, the Exchange proposes to amend Rule 7.31(a)(2)(B), relating to Limit Order Price Protection. Currently, the rule provides that a Limit Order entered before the Core Trading Session that becomes eligible to trade in the Core Trading Session will become subject to Limit Order Price Protection when the Core Trading Session begins. With this functionality, orders not yet eligible to trade are not rejected on arrival, but rather are evaluated for Limit Order Price Protection when they become eligible to trade. The Exchange proposes to amend this existing rule text to specify that it would be applicable to UTP Securities only.

Because an order in an Auction-Eligible Security would be subject to an auction process when it becomes eligible to trade, the Exchange proposes different treatment for such securities. In that auction process, a Limit Order priced better than the Auction Price would be guaranteed to participate in the applicable Auction.[24] If a security opens or reopens on a quote, it is because the Exchange has not received orders that can trade. Accordingly, the Exchange does not believe that orders in Auction-Eligible Securities would need to be subject to Limit Order Price Protection when they become eligible to trade. Accordingly, the Exchange proposes to amend Rule 7.31(a)(2)(B) to add that a Limit Order in an Auction-Eligible Security entered before the Core Trading Session or during a trading halt or pause (i.e., periods when the Exchange is not open for trading in such securities), would not be subject to Limit Order Price Protection.

Second, the Exchange proposes to amend Rule 7.31(h)(2) to provide that a Primary Pegged Order would not be eligible to participate in the Closing Auction. The Exchange believes that excluding Primary Pegged Orders from participating in the Closing Auction would streamline order processing in the Closing Auction. As described below, orders would participate in the Closing Auction at their limit price, which would likely be a different price from where a Primary Pegged Order is displayed immediately prior to the Closing Auction. Because a Primary Pegged Order, which intraday is pegged to display to the same-side PBBO, would likely need to be repriced to its limit price in order to participate in the Closing Auction, the Exchange believes that making such orders ineligible to participate in the Closing Auction would streamline order processing when transitioning to the Closing Auction.

Proposed Rule 7.35 (General)

Because there would be multiple rules governing auctions that each reference Rule ''7.35,'' the Exchange proposes to add a sub-heading above current Rule 7.35 that states ''Rule 7.35 Series. Auctions.'' The Exchange then proposes to amend the heading for Rule 7.35 to delete the term ''Reserved'' and rename it ''General.''

Proposed Rule 7.35 would set forth the general rules for auctions on the Exchange. As proposed, Rule 7.35

[23] *See* Rule 13(b)(2)(D) and (E) (specifying which IOC orders entered before the Exchange opening or during a trading halt will be held for the opening or reopening, respectively).

[24] *See* discussion *infra* regarding proposed Rule 7.35A(h) regarding allocation of orders in an Auction.

would be applicable to all auctions on the Exchange.

Definitions. Proposed Rule 7.35(a) would set forth definitions that would be used for purposes of Rule 7P. The Exchange proposes to set forth the definitions in alphabetical order in the rule text, but will describe them out of alphabetical order in this filing to provide context for definitions that reference other definitions.

Proposed Rule 7.35(a)(1) would provide that the term ''Auction'' would refer to the process for opening, re-opening, or closing of trading of Auction-Eligible Securities on the Exchange, which could result in either a trade or a quote. The Current Auction Rules use varying terms, including referencing an opening, re-opening, or closing ''transaction.'' For Pillar, the Exchange proposes that the term ''Auction'' would mean any action that results in the opening, reopening, or closing of trading, which could result in a trade or a quote, or in the case of the close of trading, no action.[25] For specific Auctions, the Exchange proposes to use terms based on NYSE Arca Rule 7.35–E and NYSE American 7.35E:

- Proposed Rule 7.35(a)(1)(A) would provide that ''Core Open Auction'' means the Auction that opens trading at the beginning of the Core Trading Session.[26] This proposed term would replace use of the terms ''opening'' and ''opening transaction'' as used in the Current Auction Rules.
- Proposed Rule 7.35(a)(1)(B) would provide that ''Trading Halt Auction'' means the Auction that reopens trading following a trading halt or pause. This proposed term would replace use of the terms ''reopening'' or ''reopening transaction'' as used in the Current Auction Rules.
- Proposed Rule 7.35(a)(1)(C) would provide that ''Closing Auction'' means the Auction that closes trading at the end of the Core Trading Session. This proposed term would replace use of the terms ''close,'' ''closing,'' and ''closing transaction'' as used in the Current Auction Rules.
- Proposed Rule 7.35(a)(1)(D) would provide that ''IPO Auction'' means the Core Open Auction for the first day of trading on the Exchange of a security that is an IPO. This definition would be new for Pillar and is based on references to IPOs in the Current Auction Rules.
- Proposed Rule 7.35(a)(1)(E) would provide that ''Direct Listing Auction'' means the Core Open Auction for the first day of trading on the Exchange of a security that is a Direct Listing. This definition would be new for Pillar and is based on the Exchange's listing rules that provide for a Direct Listing, as described above.

Proposed Rule 7.35(a)(2) would provide that the term ''Auction-Eligible Security'' would mean all securities for which the Exchange is the primary listing market. This proposed definition is based on NYSE American Rule 7.35E(a)(1), which also defines the term ''Auction-Eligible Security.'' Because the Exchange does not conduct Auctions in UTP Securities, the Exchange proposes that this definition would be applicable to Exchange-listed securities only.

Proposed Rule 7.35(a)(3) would provide that the term ''Auction Imbalance Freeze'' means the period that begins before the scheduled time for an Auction. This proposed definition is based in part on NYSE Arca Rule 7.35–E(a)(3) and NYSE American Rule 7.35E(a)(3). Because, as described below, there will be an Auction Imbalance Freeze for the Closing Auction only, the Exchange will set forth the details regarding such freeze in proposed Rule 7.35B.

Proposed Rule 7.35(a)(4) would provide that the term ''Auction Imbalance Information'' means the information that is disseminated by the Exchange for an Auction. This proposed definition is based in part on NYSE Arca Rule 7.35–E(a)(4) and NYSE American Rule 7.35E(a)(4), which also use this term. While the Exchange proposes to use the same term as NYSE Arca and NYSE American, the content of the Auction Imbalance Information that would be disseminated by the Exchange would not be based on NYSE Arca or NYSE American Pillar rules. Instead, the Exchange proposes to continue disseminating the same content for its Auction Imbalance Information as under the Current Auction Rules, which is described in Rule 15(g) as ''Opening Order Imbalance Information,'' in Rule 123C(5) as ''Publication of Mandatory MOC/LOC and Information Imbalances,'' and in Rule 123C(6) as ''Order Imbalance Information Data Feed.'' In the Pillar Auction Rules, the Exchange proposes to use standardized Pillar terminology, as defined below, to describe such information.

The following are proposed defined terms that are used for Auction Imbalance Information under the Pillar Auction Rules:

- Proposed Rule 7.35(a)(5) would define the term ''Auction Price'' as the price at which an Auction is conducted. This would be a new term in the Pillar Auction Rules and is based in part on the use of the term ''opening or reopening price'' in Rule 115A(a)(1) and use of the term ''closing price'' in Rule 123C(7).
  - Proposed Rule 7.35(a)(5)(A) would provide that a buy (sell) order is ''better-priced'' if it is priced higher (lower) than the Imbalance Reference Price or the Auction Price. This proposed definition is based in part on the term ''Better Priced'' as defined in Rule 123C(1)(a) relating to the close.[27] In the Pillar Auction Rules, the Exchange proposes to use the term ''better-priced'' for all Auctions.[28] The rule would further provide that Market, MOO, and MOC Orders would be better-priced orders unless such orders have been ranked as a Priority 2—Display Order during a Short Sale Period as provided for in Rule 7.16(f). This proposed rule text is based in part on Rule 115A(a)(1)(A), which provides that Market Orders and MOO Orders are guaranteed to participate in an opening or reopening transaction, and Rule 123C(7)(a), which provides that MOC Orders are guaranteed to participate in the closing transaction. Finally, this definition would provide that DMM Interest (defined below) to buy (sell) would never be a better-priced order, even if priced higher (lower) than the Imbalance Reference Price or Auction Price. This proposal is consistent with the Exchange's proposal, described in greater detail below, that DMM Interest is not guaranteed to participate in an Auction.[29]
  - Proposed Rule 7.35(a)(5)(B) would provide that a buy (sell) order is ''at-priced'' if it is priced equal to the Imbalance Reference Price or Auction

[25] Currently, if there is no interest for a closing transaction, the DMM is not required to take any action on such security. Because the Exchange does not have any trading after 4:00 p.m., the Exchange does not publish a quote for such security if there is no closing transaction. The Exchange will disseminate an Official Closing Price for such security that is determined based on Rule 123C(1)(e)(i)–(iii), or on Pillar, under proposed Rule 1.1(s).

[26] As described below, the Exchange proposes to amend Rule 7.34(a)(2) relating to the Core Trading Session. The term ''Core Trading Hours'' means ''the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time.'' *See* Rule 1.1.

[27] Rule 123C(1)(a) provides that ''[b]etter priced than the closing price means an order that is lower than the closing price in the case of an order to sell or higher than the closing price in the case of an order to buy.'' In addition, for opening and reopening transactions, Rule 115A(a)(1)(A) describes interest to buy (sell) priced higher (lower) than the opening or reopening price, which is the same definition as the proposed ''better-priced'' orders in the Pillar Auction Rules.

[28] As described in greater detail below, better-priced orders are guaranteed to participate in an Auction. *See* discussion *infra* regarding proposed Rules 7.35A(h)(1) and 7.35B(h)(1).

[29] *See* discussion *infra* regarding proposed Rules 7.35A(h)(2) and (3) and 7.35B(h)(2) and (3).

Price. This would be a new term for the Pillar Auction Rules and is based in part on use of the phrase orders ''with a price equal to the closing price,'' as used in Rule 123C(7)(b), or orders ''priced equal to the opening or reopening price of a security,'' as used in Rule 115A(a)(1)(B).

• In proposed Rule 7.35(a)(8), the Exchange proposes to define ''DMM Interest'' as all buy and sell interest entered by a DMM unit in its assigned securities. As noted above, pursuant to Rule 104(a)(2) and (3), the DMM has an obligation to facilitate Auctions in assigned securities and to supply liquidity as needed. In addition, pursuant to Rule 104(f)(ii), the DMM has the obligation to maintain a fair and orderly market in the stocks assigned to the DMM, which implies the maintenance of price continuity with reasonable depth, and to minimize the effects of temporary disparity between supply and demand. The Exchange currently makes functionality available to DMMs to facilitate these obligations when they conduct Auctions. For example, when facilitating an auction, a DMM can either manually enter buy or sell interest into the graphical user interface that is used by the DMM on the Trading Floor [30] to manage the auction process or algorithmically enter buy or sell interest in response to the Exchange's electronic request to the DMM unit to conduct an Auction.[31] Currently, the DMM interest entered as part of this functionality can be intended to participate in an Auction only or to meet the obligation to maintain price continuity and depth in assigned securities immediately following the auction. In the Pillar Auction Rules, the Exchange believes it would promote transparency regarding the auction process to separately define these types of DMM Interest for Auctions. As described below, these terms would be used in the Pillar Auction Rules relating to Auction Imbalance Information, entry of orders during the Auction Processing Period, the opening and closing process, and auction allocation. As proposed, the following types of DMM Interest would be available to DMMs to facilitate their obligations under Rule 104 in their assigned securities:

○ Proposed Rule 7.35(a)(8)(A) would define ''DMM Auction Liquidity'' as non-displayed buy and sell interest that is (i) entered by a DMM either manually on the Trading Floor or as part of the DMM unit's electronic message to conduct an Auction; (ii) designated for an Auction only; and (iii) not entered as an order or modifier as defined in Rule 7.31. This would be a new term for Pillar Auction Rules that would describe current DMM functionality to enter buy and sell interest intended for an auction only. Currently, such DMM interest is not displayed, is generally entered by the DMM unit contemporaneously with conducting an Auction, and cancels if it does not participate in an Auction. In addition, this buy and sell interest is unique to the DMM's role in facilitating Auctions and differs from the type of orders defined in Rule 7.31. The term ''DMM Auction Liquidity'' would therefore not represent new functionality, but would define this functionality for the Pillar Auction Rules. Although it is not displayed, the Exchange proposes that for the purpose of ranking and allocation in an Auction, DMM Auction Liquidity would be ranked Priority 2—Display Orders. As described in greater detail below in connection with proposed Rule 7.35A(h)(3) and 7.35B(h)(3), this ranking would be applicable only for parity allocations among at-priced orders at the Auction Price and if the only DMM Interest is DMM Auction Liquidity, such DMM Interest would not have time priority on the allocation wheel. Proposed Rule 7.35(a)(4), which defines the term ''Auction Imbalance Information,'' would further provide that DMM Auction Liquidity would never be included in Auction Imbalance Information. Because DMM Auction Liquidity generally is not entered until just before an Auction is to be conducted, is intended to be offsetting interest, is not displayed, and cancels if not executed in an Auction, the Exchange does not believe that this information should be included in Auction Imbalance Information.

○ Proposed Rule 7.35(a)(8)(B) would define ''DMM Orders'' to be orders, as defined under Rule 7.31, entered by a DMM unit. Such orders would be ranked as provided for in Rule 7.31. Unlike DMM Auction Liquidity, DMM Orders would function no differently than the orders available to all other member organizations as described in Rule 7.31. For example, for the Closing Auction, this definition would include those orders entered by the DMM during continuous trading and that are not executed before the Closing Auction. As currently available, in Pillar, the DMM would also be able to enter DMM Orders when it uses its electronic functionality to facilitate an Auction.

○ Proposed Rule 7.35(a)(8)(C) would define ''DMM After-Auction Orders'' to be orders, as defined under Rule 7.31, entered by a DMM unit before either the Core Open or Trading Halt Auction that would not participate in an Auction and would instead be intended to maintain price continuity with reasonable depth immediately following an Auction, as required by Rule 104(f)(ii). This proposed definition would be new for the Pillar Auction Rules and would describe the existing functionality, described above, that the DMM can enter buy and sell orders that are intended to be included in the Exchange Book immediately after the opening or reopening transaction to meet the obligation to maintain price continuity with reasonable depth following such transactions. The Exchange believes that this unique DMM obligation, and related functionality to meet this obligation, protects investors and the public interest by ensuring a smooth transition from an Auction to continuous trading. As further proposed, once entered on the Exchange Book, DMM After-Auction Orders would be ranked as provided for in Rule 7.31.

• Proposed Rule 7.35(a)(10) would define the term ''Imbalance Reference Price'' as the reference price that is used for the applicable Auction to determine the Auction Imbalance Information. This would be a new term in the Pillar Auction Rules and is based on the use of the term ''reference price'' in Rules 123C(6)(a)(iii) and 15(g)(2)(A).

Proposed Rule 7.35(a)(4)(A) would define the term ''Imbalance'' to mean the volume of better-priced buy (sell) shares that cannot be paired with both at-priced and better-priced sell (buy) shares at the Imbalance Reference Price. Use of the term ''Imbalance'' in the Pillar Auction Rules refers to the manner by which an imbalance is calculated, and not the actual information that is disseminated. Under the Current Auction Rules, the Exchange calculates imbalance information in this manner.[32] For

[30] The term ''Trading Floor'' is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Buttonwood Room.''

[31] Pursuant to Rule 104(b)(i), DMM units have the ability to employ algorithms for quoting and trading consistent with NYSE and SEC regulations, and as provided for in Rules 104(a)(2) and (3) and 104(b)(ii), such algorithms will have access to aggregate order information in order to comply with the DMM requirement to facilitate Auctions.

[32] The Exchange currently calculates information relating to imbalances for its auctions differently from NYSE Arca and NYSE American. *See, e.g.,* NYSE Arca Rule 7.35–E(a)(7) and NYSE American Rule 7.35E(a)(7) (describing the imbalance as the ''number of buy (sell) shares that cannot be matched with sell (buy) shares''). As described below, better-priced interest is guaranteed to participate in an

Continued

example, Rule 123C(4)(a)(iii) and (iv) provide that buy/sell closing volume does not include at-priced interest. The Exchange proposes to standardize this method of calculation for all Auctions with the proposed term ''Imbalance.'' As further proposed, the side that cannot be paired would be referred to as the ''Side of the Imbalance.''

The Exchange proposes that it would disseminate two types of Imbalance publications: Total Imbalance and Closing Imbalance. Total Imbalance information would be disseminated for all Auctions, and Closing Imbalance information would be disseminated for the Closing Auction only:

• Proposed Rule 7.35(a)(4)(A)(i) would provide that the term ''Total Imbalance'' means for the Core Open and Trading Halt Auctions, the Imbalance of all orders eligible to participate in an Auction and for the Closing Auction, the Imbalance of MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

This would be a new term for the Pillar Auction Rules and is based in part on the term ''Total Imbalance,'' as used in NYSE Arca Rule 7.35–E(a)(7)(A) and NYSE American Rule 7.35E(a)(7)(A), but with the substantive difference compared to those exchanges in how such Imbalance information would be calculated on the Exchange, as described above.

For the Core Open and Trading Halt Auctions, this proposed rule text is based in part on Rule 15(g)(1), which provides that Order Imbalance Information includes real-time order imbalances that accumulate prior to the opening transaction on the Exchange and that such Order Imbalance Information includes all interest eligible for execution in the opening transaction of the security in Exchange systems. For the Closing Auction, this proposed rule text is based in part on Rules 123C(4) and (6)(a)(ii), with non-substantive differences to use Pillar terminology. Accordingly, the content included in Auction Imbalance Information under the Pillar Auction Rules would be the same as the content included in Order Imbalance Information under the Current Auction Rules, including that Total Imbalance information would differ for the Closing Auction as compared to the Total Imbalance information included for the Core Open or Trading Halt Auction.

• Proposed Rule 7.35(a)(4)(A)(ii) would provide that the term ''Closing Imbalance'' means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. The rule would further provide that a ''Manual Closing Imbalance'' would mean a Closing Imbalance disseminated by the DMM before the Closing Auction Imbalance Freeze Time and a ''Regulatory Closing Imbalance'' would mean a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time. These would be new terms for the Pillar Auction Rules to define the content currently described in Rule 123C as the ''Information Imbalance Publication'' and ''Mandatory MOC/LOC Imbalance Publication.'' As described in Rules 123C(1)(b) (defining the term ''Informational Imbalance Publication'') and 123C(1)(d) (defining the term ''Mandatory MOC/LOC Imbalance Publication''), under the Current Auction Rules, this is the information that indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell.[33] As described in Rule 123C(4), the manner by which the Informational Imbalance Publication and the Mandatory MOC/LOC Imbalance Publication is determined is the same; the difference between the two is when they are published and the impact they have on order entry. As discussed in greater detail below in connection with proposed Rule 7.35B(d), the Exchange proposes the same timing distinction between a Manual Closing Imbalance and a Regulatory Closing Imbalance.

Proposed Rule 7.35(a)(4)(B) would provide that the term ''Paired Quantity'' means the volume of better-priced and at-priced buy shares that can be paired with better-priced and at-priced sell shares at the Imbalance Reference Price and ''Unpaired Quantity'' means the volume of better-priced and at-priced buy shares that cannot be paired with both at-priced and better-priced sell shares at the Imbalance Reference Price. The proposed rule would further provide that the term ''Side of the Unpaired Quantity'' would mean the side of the Unpaired Quantity with the greater quantity of shares that are eligible to trade at the Imbalance Reference Price.

The proposed Unpaired Quantity and Side of the Unpaired Quantity would be new information on Pillar, and would be available for Closing Auctions only. As noted above, Imbalance information on the Exchange means better-priced orders on one side of the market compared to both better-priced and at-price orders on the other side of the market. The Exchange believes that the Unpaired Quantity data would provide market participants with information regarding how many shares would be unpaired at the Imbalance Reference Price, which would be different from how the Imbalance would be calculated.[34]

• Proposed Rule 7.35(a)(4)(B)(i) would provide that for the Core Open and Trading Halt Auctions, the Paired Quantity would include all orders eligible to trade in an Auction. This proposed rule text is based on Rule 15(g)(1), which provides that Order Imbalance Information includes all interest eligible for execution in the opening transaction of the security in Exchange systems.

• Proposed Rule 7.35(a)(4)(B)(ii) would provide that for the Closing Auction, Paired and Unpaired Quantity would include MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders. This proposed rule text is based in part on Rule 123C(6)(a)(i) and (ii), which describes the various data fields under the Current Auction Rules that include Auction-Only Orders.

Proposed Rule 7.35(a)(4)(C) would define the term ''Continuous Book Clearing Price'' as the price at which all better-priced orders eligible to trade in an Auction on the Side of the Imbalance of such orders can be traded. As further proposed, if there is no Imbalance of all orders eligible to trade in the Auction, the Continuous Book Clearing Price would be the Imbalance Reference Price. This would be a new term for the Pillar Auction Rules and is based in part on Rule 123C(6)(a)(i)(C), which refers to a data field indicating the price at which interest in the Display Book as well as closing-only orders may be executed in full,[35] and Rule 15(g)(1), which refers to the ''price at which interest eligible to participate in the opening transaction may be executed in full.''

Proposed Rule 7.35(a)(4)(D) would define the term ''Closing Only Interest Clearing Price'' as the price at which all

Auction on the Exchange, therefore, the Exchange's manner of calculating the Imbalance provides information about how many shares would need to be satisfied in an Auction.

[33] The Rule 123C(1)(d) definition provides further details of what constitutes a Mandatory MOC/LOC Imbalance Publication and the Exchange proposes to move that text in the Pillar Auction Rules to proposed Rule 7.35B(d)(1).

[34] This proposed definition of ''Unpaired Quantity'' is comparable to how NYSE Arca and NYSE American calculate imbalance information under NYSE Arca Rule 7.35–E(a)(7) and NYSE American Rule 7.35E(a)(7) (i.e., the ''number of buy (sell) shares that cannot be matched with sell (buy) shares''.)

[35] As described above and consistent with Rule 123C(6), for the Closing Auction, only the Continuous Book Clearing Price would be based on all orders eligible to participate in the Closing Auction.

better-priced MOC and LOC Orders on the Side of the Total Imbalance can trade with both better-priced and at-priced contra-side MOC, LOC, and Closing IO Orders. As further proposed, if there is no Total Imbalance or there are no MOC or LOC Orders, the Closing Interest Only Clearing Price would be the Imbalance Reference Price. This would be a new term for the Pillar Auction Rules and is based in part on Rule 123C(6)(a)(i)(B), which refers to ''a data field indicating the price at which closing-only interest . . . may be executed in full.''

Proposed Rule 7.35(a)(6) would define the term ''Auction Processing Period'' to mean the period during which the applicable Auction is being processed. This proposed term is new for the Pillar Auction Rules and is based in part on the same term as used in NYSE Arca Rule 7.35–E(a)(2) and NYSE American Rule 7.35E(a)(2). Because Auctions can be facilitated by a DMM on the Exchange, which differs from the electronic auction process on NYSE Arca and NYSE American, the Exchange proposes to further provide that for DMM-Facilitated Auctions, the Auction Processing Period includes the time when the DMM begins the process for conducting the Auction. As noted above, on the Trading Floor, the Exchange provides the DMM with a graphical user interface to manage the auction process, generally referred to as the ''opening'' or ''closing'' template. If a DMM-Facilitated Auction is being manually conducted from the Trading Floor, as proposed, the Auction Processing Period would begin when the DMM begins using such template to conduct the Auction, which the Exchange proposes to refer to as the ''Pre-Auction Freeze.'' Orders entered during such Auction Processing Period would be processed as described in proposed Rule 7.35(e).

Proposed Rule 7.35(a)(7) would define the term ''Closing Auction Imbalance Freeze Time'' to mean 10 minutes before the scheduled close of trading. This proposed term would be new for the Pillar Auction Rules and is based on the numerous references to 3:50 p.m. in Rule 123C and Supplementary Material .40 to Rule 123C.[36] The Exchange believes that the proposed definition would streamline the Pillar Auction Rules as compared to Rule 123C by using a single term to reference the period 10 minutes before the scheduled close of trading and would obviate the need for the text from Supplementary Material .40 to Rule 123C to account for early scheduled closes. The Exchange further believes that the proposed term is consistent with the use of the term ''Auction Imbalance Freeze'' in the NYSE Arca and NYSE American auction rules.[37]

Proposed Rule 7.35(a)(9) would define the term ''Floor Broker Interest'' to mean orders represented orally by a Floor broker at the point of sale. This would be a new term for the Pillar Auction Rules and is based in part on the reference to ''Floor broker interest entered manually by the DMM'' as described in Rule 123C(7)(a)(iii).

Proposed Rule 7.35(a)(11) would define the term ''Last Sale Price'' to mean one of the following:

- Proposed Rule 7.35(a)(11)(A) would define the term ''Consolidated Last Sale Price'' to mean the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security. This proposed definition would be new for Pillar on the Exchange. Under this proposed definition, prior to 9:30 a.m., the Consolidated Last Sale Price would be the prior day's Official Closing Price for a security. However, after 9:30 a.m., if a security is trading on other exchanges, the Consolidated Last Sale Price would be the most recent consolidated last-sale eligible trade in such security on any exchange. The Exchange further proposes to provide that for a transferred security, the Consolidated Last Sale Price means the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the official closing price from the prior trading day for that security from the exchange from which the security was transferred. This proposed rule text is based in part on Rule 15(g)(2)(B)(iv), which provides that for purposes of Order Imbalance Information, if the security is a transferred security, the reference price is the last reported sale price on the securities market from which the security was transferred prior to its first day of trading on the Exchange. The Exchange believes that the proposed definition of ''Consolidated Last Sale Price'' would obviate the need for this rule text. As described below, the Consolidated Last Sale Price may be used for determining the Imbalance Reference Price for a Core Open Auction or Trading Halt Auction.[38]
- Proposed Rule 7.35(a)(11)(B) would define the term ''Exchange Last Sale Price'' to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security. This proposed definition would be new for the Pillar Auction Rules and is based in part on references to the term ''last sale price'' in Rules 123C(4)(a)(i) and (ii) and 123C(6)(a)(iii)(A)–(C).

Proposed Rule 7.35(a)(12) would define the term ''Legitimate Error'' to mean an error in any term of an order, such as price, number of shares, side of the transaction (buy or sell), or identification of the security. This proposed definition would be new for the Pillar Auction Rules and is based in part on Rule 123C(1)(c), which defines the term ''Legitimate Error'' to mean ''an error in any term of a MOC or LOC order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security.'' Unlike the Current Auction Rules, use of this term in the Pillar Auction Rules would not be limited to MOC and LOC Orders.[39]

Auction Ranking. Proposed Rule 7.35(b) would set forth the general rules for how different types of orders would be ranked for purposes of how they are included in Auction Imbalance Information or for an Auction allocation.

First, proposed Rule 7.35(b)(1) would provide that orders would be ranked based on the price at which they would participate in an Auction. The price at which an order would be ranked would be used to determine whether it is a better-priced or an at-priced order. The proposed rule would specify which price would be applicable to different types of orders, as follows:

- Proposed Rule 7.35(b)(1)(A) would provide that for Limit Orders, the ranked price would be the limit price of

[36] The Exchange recently amended Rule 123C to change the time from 3:45 p.m. to 3:50 p.m. and plans to implement this change on April 1, 2019. *See* Securities Exchange Act Release No. 85021 (January 31, 2019) (SR–NYSE–2018–58) (Approval Order) and Trader Update dated December 14, 2018, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_MOC_LOC_Cutoff_Time_Change.pdf.* In the Pillar Auction Rules, the Exchange similarly proposes to use 3:50 p.m., but instead of referring to the clock time in the rule, would refer to a time period before the scheduled close of trading that is defined as the ''Closing Auction Imbalance Freeze Time.''

[37] *See, e.g.,* NYSE American Rule 7.35E(d)(2) (describing the time for when the Closing Auction Imbalance Freeze would begin by referring to ten minutes before the scheduled time for the Closing Auction).

[38] Use of the Consolidated Last Sale Price for the Core Open or Trading Halt Auction would be a substantive difference in the Pillar Auction Rules from the Current Auction Rules. *See* discussion *infra* regarding proposed Rule 7.35A(e)(3).

[39] *See* discussion *infra* regarding proposed Rules 7.35B(a)(1)(C) and 7.35B(f)(2)(A) relating to the proposed use of the term ''Legitimate Error.''

an order.[40] The Limit Orders that would be eligible to participate in Auctions include varying order types that are subject to repricing, such as a Non-Routable Limit Order, ALO, and Primary Pegged Order. Under the Pillar Auction Rules, such orders would be ranked for purposes of both Auction Imbalance Information and Auction allocation at their limit price, which represents current functionality.[41]

- Proposed Rule 7.35(b)(1)(B) would provide that for Opening D Orders, described above, the ranked price would be the undisplayed discretionary price. This would be new text for Pillar Auction Rules and is based on how d-Quotes designated for the opening or reopening transaction are ranked for purposes of Order Imbalance Information under Rule 15(g) and allocation in an auction under Rule 115A.
- Proposed Rule 7.35(b)(1)(C) would provide that for Closing D Orders, described above, the ranked price would be based on a specified time. As proposed, up to five minutes before the end of Core Trading Hours, the ranked price of a Closing D Order would be the order's limit price.[42] As further proposed, beginning five minutes before the end of Core Trading Hours, the ranked price of a Closing D Order would be the order's undisplayed discretionary price.[43] This proposed rule text is based on how currently, pursuant to Rule 123C(6)(a)(ii), at 3:55 p.m., Order Imbalance Information begins including d-Quotes eligible to participate in the closing transaction at their undisplayed discretionary price. As described below, on Pillar, the Exchange proposes to retain this functionality for Closing D Orders. To reflect this functionality, and to reflect that prior to 3:55 p.m., Closing D Orders would be eligible to trade at their limit price,[44] the Exchange proposes that the price at which such orders would be ranked would change once they are included in Auction Imbalance Information at their undisplayed discretionary price.
- Proposed Rule 7.35(b)(1)(D) would provide that the ranked price for DMM Interest would be the Imbalance Reference Price (for when DMM Interest is included in the Auction Imbalance Information) or the Auction Price (for how DMM Interest is ranked for an Auction allocation). As described in more detail below, regardless of the limit price of DMM Interest, it will never be considered ''better-priced'' interest or be guaranteed to participate in an Auction. Accordingly, for purposes of Auctions, DMM Interest is always considered at-priced interest. The Exchange therefore believes that the ranked price of such interest should be either the Imbalance Reference Price or the Auction Price so that it is not included on the Side of the Imbalance for the Imbalance calculation.

Second, proposed Rule 7.35(b)(2) would provide that the working time for an order participating in an Auction would be its entry time, which would be used for determining the relative time priority of such orders on the applicable allocation wheel under Rule 7.37(b). Use of the entry time would be new for NYSE on Pillar. Currently, the last time stamp associated with an order is used for opening, reopening, and closing transactions. The Exchange proposes to change this functionality on Pillar because an order would be participating at its limit price in an auction, and not its last working price (if it is an order that reprices), and therefore the entry time is reflective of the relative time priority of multiple orders.

The rule would further provide that the working time of a Closing D Order would be the later of its entry time or five minutes before the end of Core Trading Hours.[45] The Exchange believes it would be appropriate to assign a working time to such orders based on when they would be included in the Auction Imbalance Information at their undisplayed discretionary price. As noted above, the Exchange would begin including the undisplayed discretionary price of Closing D Orders in Auction Imbalance Information five minutes before the scheduled close of trading.

The Exchange also proposes that if a short sale order is repriced to a Permitted Price during a Short Sale Period pursuant to Rule 7.16(f), the time of such repricing would be considered the working time for such an order participating in an Auction. The Exchange believes that the time of such repricing should be used as the working time rather than the time of entry because such order would participate in an Auction at the Permitted Price, and not at the limit price of the order.

Auction Imbalance Information. Proposed Rule 7.35(c) would provide that the Exchange disseminates Auction Imbalance Information via a proprietary data feed during the times specified in the Rule 7.35 Series. This proposed rule text would be new for the Pillar Auction Rules and is based in part on NYSE Arca Rule 7.35–E(a)(4)(C) and NYSE American Rule 7.35E(a)(4)(C). This proposed rule text is also based on Rule 15(g) and 123C(6), which provide that the Exchange may make available Order Imbalance Information.

Proposed Rule 7.35(c)(1) would provide that Auction Imbalance Information would be updated at least every second, unless there is no change to the information. This proposed rule is based on NYSE Arca Rule 7.35–E(a)(4)(A) and NYSE American Rule 7.35E(a)(4)(A) and would be a substantive difference from how the Exchange currently functions.[46] The Exchange believes that disseminating Auction Imbalance Information at least every second, rather than the five-second time intervals (or longer) under the current rules, would provide member organizations with more updated information leading into each respective Auction. The Exchange further believes that this proposed substantive difference from the Current Auction Rules would standardize the manner of dissemination of Auction Imbalance Information across affiliated exchanges.

Proposed Rule 7.35(c)(2) would provide that Auction Imbalance Information would continue to be disseminated until the Auction begins. This proposed rule text is new for the Pillar Auction Rules. This rule is based in part on Rule 15(g)(3)(C) (and Supplementary Material .10 to Rule 15 relating to reopening transactions), which provides that Order Imbalance Information continues to be disseminated until the opening or reopening of trading in that security. Accordingly, for the Core Open Auction and Trading Halt Auction, the functionality would not change on Pillar.

However, this proposed rule text would be a substantive difference for Closing Auctions. Currently, Rule

[40] The term ''limit price'' is defined in Rule 7.36(a)(2) to mean the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.

[41] For example, under Rule 13(e)(1)(A), an ALO Order may participate in openings, reopenings, or closing, but the ALO designation shall be ignored, which means that the order would participate in such transactions at its limit price.

[42] *See* proposed Rule 7.35(b)(1)(C)(i).

[43] *See* proposed Rule 7.35(b)(1)(C)(ii).

[44] As described above, pursuant to proposed Rule 7.31(c)(2)(C)(ii), on arrival, Closing D Orders would be eligible to trade based on their limit price.

[45] For example, a Closing D Order entered at 3:00 p.m. would have a working time of 3:55 p.m. and a Closing D Order entered at 3:57 p.m. would have a working time of 3:57 pm.

[46] Pursuant to Rule 15(g)(3), Order Imbalance Information before the opening is disseminated approximately every five minutes between 8:30 a.m. and 9:00 a.m., approximately every minute between 9:00 a.m. and 9:20 a.m., and approximately every five seconds between 9:20 a.m. and the opening of trading in that security. Pursuant to Rule 123C(6)(a)(iv), Order Imbalance Information is disseminated approximately every five seconds between 3:50 p.m. and 4:00 p.m.

123C(6)(a)(iv) provides that Order Imbalance Information for the close is disseminated until 4:00 p.m. The Exchange therefore stops disseminating this information at 4:00 p.m., regardless of the timing of the closing transaction. In the Pillar Auction Rules, the Exchange proposes that for the Closing Auction, the Exchange would continue disseminating Auction Imbalance Information until the Closing Auction begins, which is after 4:00 p.m.[47] As discussed below, Floor Broker Interest that was represented by the end of Core Trading Hours will be entered electronically into Exchange systems after 4:00 p.m. and such interest may change the Auction Imbalance Information.[48] The Exchange believes that it would promote transparency and provide market participants with greater specificity regarding a potential Closing Auction Price for such Floor Broker Interest to be included in the Auction Imbalance Information after the scheduled end of Core Trading Hours.

Proposed Rule 7.35(c)(3) would provide that the Exchange would not disseminate Auction Imbalance Information if a security is an IPO or a Direct Listing and has not had its IPO Auction or Direct Listing Auction. This proposed rule text would be new for the Pillar Auctions Rules and is based in part on how Rule 15(g) functions for IPOs.[49] The Exchange proposes non-substantive differences to use Pillar terminology to describe this functionality and to extend this functionality to Direct Listings as well.

Openings and Reopenings in the Last Ten Minutes of Trading. Proposed Rule 7.35(d) would provide that the Exchange would not open or reopen a security that has not yet opened or is halted or paused and would not transition to continuous trading if such opening or reopening would be in the last ten minutes of trading before the end of Core Trading Hours. This proposed rule text would be new for the Pillar Auction Rules and is based in part on the first sentence of NYSE Arca Rule 7.35–E(e)(10) and NYSE American Rule 7.35E(e)(10), which both provide that if the re-opening time for a Trading Halt Auction would be in the last ten minutes of trading before the end of Core Trading Hours, NYSE Arca and NYSE American will not conduct a Trading Halt Auction in that security and will not transition to continuous trading. This proposed rule text is also based on Rule 80C(b)(2), which provides that if the reopening following a Trading Pause would be in the last ten minutes of trading before the end of regular trading hours, the Exchange will not reopen trading in that security and will not transition to continuous trading.

The Exchange proposes a substantive difference for the first sentence of Rule 7.35(d) as compared to the NYSE Arca and NYSE American versions of the rule to reflect that on the Exchange, a security may not be opened by 3:50 p.m.[50] The Exchange proposes that if a security has not opened or reopened before the last ten minutes of trading before the end of Core Trading Hours, the Exchange will not open that security during that period.

Proposed Rule 7.35(d) would further provide how the Exchange would process such security if it is eligible to trade in the last ten minutes of trading before the end of Core Trading Hours, i.e., it is not subject to a regulatory halt, as follows:

- Proposed Rule 7.35(d)(1) would provide that the Exchange would remain unopened, halted, or paused and would disseminate an auction indicator that the security is eligible to be closed as provided for in the Rule 7.35 Series. This proposed rule text is based on the second sentence of NYSE Arca Rule 7.35–E(e)(10) and NYSE American Rule 7.35E(e)(10) and the definition of ''Auction Indicator'' in NYSE Arca Rule 7.35–E(a)(13) and NYSE American Rule 7.35E(a)(13) with a proposed substantive difference that the Exchange would disseminate an auction indicator only if such security would be eligible to be closed. The Exchange believes that this proposed auction indicator would provide transparency to member organizations whether a Closing Auction would be conducted in a security that has not opened or reopened for trading by the last ten minutes of trading before the end of Core Trading Hours.
- Proposed Rule 7.35(d)(2) would provide that MOO Orders, LOO Orders, Opening D Orders, and Primary Pegged Orders would be cancelled. This proposed rule text is based in part on NYSE Arca Rule 7.35–E(e)(10)(A) and NYSE American Rule 7.35E(e)(10)(A) with a proposed substantive difference to reference Opening D Orders and Primary Pegged Orders, which, as discussed above, are not eligible to participate in the Closing Auction.[51]
- Proposed Rule 7.35(d)(3) would provide that the Exchange would begin disseminating Closing Auction Imbalance Information. This proposed rule text would be new for Pillar Auction Rules and is intended to provide transparency in Exchange rules regarding which Auction Imbalance Information would be disseminated by the Exchange.

Order Processing During an Auction Processing Period. The Exchange proposes that the manner by which new orders and requests to cancel, cancel and replace, or modify an order would be processed during an Auction Processing Period would be the same as how such instructions are processed on its affiliated exchanges, with specified differences to reflect the Exchange's model to have DMM-facilitated auctions.

Proposed Rules 7.35(e), 7.35(e)(1), and 7.35(e)(2) are based on NYSE Arca Rules 7.35–E(g), 7.35–E(g)(1), and 7.35–E(g)(2) and NYSE American Rules 7.35E(g), 7.35E(g)(1), and 7.35(g)(2) without any differences. Specifically, as proposed, new orders received during the Auction Processing Period would be accepted but would not be processed until after the Auction Processing Period. In other words, such orders would not be eligible to participate in an Auction, which is how order processing functions currently on the Exchange.

The Exchange proposes additional text for proposed Rule 7.35(e) as compared to the rules of NYSE Arca and NYSE American to reflect differences in how DMM-Facilitated Auctions would function, and specifically, that the Auction Processing Period on the Exchange would include the Pre-Auction Freeze. As proposed, DMM Auction Liquidity, certain DMM Orders, and Floor Broker Interest entered during the Pre-Auction Freeze would be eligible to participate in the applicable Auction. Any other orders entered during the Pre-Auction Freeze would be considered entered during the Auction Processing Period, and therefore would be accepted but not eligible to participate in an Auction.

The Exchange proposes this difference because during a DMM-Facilitated Auction, the DMM uses the respective opening or closing template to enter DMM Auction Liquidity, DMM Orders, or Floor Broker Interest (for the

[47] As discussed below, because of the manual nature of the Closing Auction, the Auction Processing Period for such Auction begins after 4:00 p.m.

[48] *See* discussion *infra* regarding proposed Rule 7.35B(a)(1).

[49] *See* Securities Exchange Act Release No. 74837 (April 29, 2015), 80 FR 25741 (May 5, 2015) (SR–NYSE–2015–19) (Notice of filing and immediate effectiveness of proposed rule change to reflect that Exchange systems will not publish Order Imbalance Information for an IPO.)

[50] Both NYSE Arca and NYSE American transition electronically to the Core Trading Session at 9:30 a.m. By contrast, DMM-Facilitated Core Open Auctions do not require the DMM to open a security if there is no interest in such security. Alternately, a security may be the subject of a regulatory halt at that time.

[51] *See* proposed Rules 7.31(c)(1) and 7.31(h)(2).

Closing Auction only). When facilitating an Auction electronically, the DMM is similarly able to enter DMM Auction Liquidity and certain DMM Orders that would be eligible to participate in the applicable Auction.[52] Accordingly, this proposed rule change would reflect in Pillar Auction Rules how DMM-facilitated auctions would function, which would differ from how the NYSE Arca and NYSE American electronic auctions function.

The Exchange proposes an additional difference as compared to the NYSE Arca and NYSE American rules to reflect that an order instruction received during the Pre-Auction Freeze for the Closing Auction would be processed on arrival if it relates to Floor Broker Interest entered before the Pre-Auction Freeze. In proposed Rule 7.35(e), an ''order instruction'' would be defined for purposes of proposed Rules 7.35(e) and (f) to mean a request to cancel, cancel and replace, or modify an order, which is based on the NYSE Arca and NYSE American use of such term. As described in greater detail below, Floor Broker Interest for the Closing Auction would be electronically entered after the end of Core Trading Hours, and there would be specified circumstances when such interest could be cancelled, which the DMM would have to process.[53] Because the DMM would be processing such cancellation requests, the Exchange proposes that such requests would be accepted during the Pre-Auction Freeze, which is controlled by the DMM.

Transition to Continuous Trading. The Exchange also proposes that the manner by which the Exchange would transition to continuous trading following an Auction would be based on existing Pillar functionality. Accordingly, proposed Rule 7.35(f) and subparagraphs (1)–(3) would be based on NYSE Arca Rule 7.35–E(h) and subparagraphs (1)–(3) and NYSE American Rule 7.35E(h) and subparagraphs (1)–(3) with the following substantive differences.

- First, current NYSE Arca Rule 7.35–E(h)(2)(A) provides that during the transition to continuous trading, an order instruction (as defined in NYSE Arca Rule 7.35–E(g)) received during the Auction Imbalance Freeze, the transition to continuous trading, or the Auction Processing Period would be processed in time sequence with the processing of orders as specified in NYSE Arca Rules 7.35–E(h)(3)(A) or (B) if it relates to an order that was received before the Auction Processing Period. Proposed Rule 7.35(f)(2)(A) would not include text that is not applicable to the NYSE (e.g., Auction Imbalance Freeze). The Exchange proposes an additional difference because the rule would provide that the processing of order instructions described in that sentence would also apply to orders that have already transitioned to continuous trading. This is intended to promote clarity and transparency in Exchange rules of when an order instruction (as defined in proposed Rule 7.35(e)) would be applied to an order. The Exchange proposes a corollary difference to proposed Rule 7.35(f)(2)(B) as compared to NYSE Arca Rule 7.35–E(h)(2)(B) to provide that subparagraph of proposed Rule 7.35(f)(2)(B) would apply only to an order instruction (as defined in Rule 7.35(e)) for an order that has not yet transitioned to continuous trading. The Exchange also proposes to make a clarifying difference from the NYSE Arca version to add the word ''either'' before the phrase ''the Auction Processing Period or the transition to continuous trading.''
- Second, NYSE Arca Rule 7.35–E(h)(3) sets forth how orders are processed when transitioning to continuous trading from a prior trading session or following an auction. Because the Exchange only has one trading session for Exchange-listed securities, the Exchange does not propose to include text in proposed Rule 7.35(f)(3) from the NYSE Arca rule referencing transitioning to continuous trading from a prior trading session. The Exchange further proposes that proposed Rule 7.35(f)(3)(A)(i) would provide that reserve interest that replenishes the display quantity of a routable Reserve Order would route, if marketable against protected quotations on Away Markets. This proposed rule text differs from NYSE Arca Rule 7.35–E(h)(3)(A)(i) because the Exchange would not include the modifier ''fully-executed'' before the reference to ''display quantity.'' The Exchange has amended its Reserve Order functionality and specifically the circumstances when a Reserve Order would be replenished, and the reference to ''fully-executed'' is now moot.[54]
- Third, NYSE Arca Rule 7.35–E(h)(3)(B) provides that unexecuted orders that were not eligible to trade in the prior trading session (or were received during a halt or pause) or that were received during the Auction Processing Period, will be assigned a new working time at the end of the Auction Processing Period in time sequence relative to one another based on original entry time. The Exchange's proposed Rule 7.35(f)(3)(B) would differ from NYSE Arca Rule 7.35–E(h)(3)(B) because it would not include references to orders received during a halt or pause or orders that were not eligible to trade in the prior trading session (because the Exchange has only one trading session for Exchange-listed securities). The Exchange proposes that the working time for orders received during a halt or pause would be the original entry time, as provided for in Rule 7.36(f)(1), and therefore would not have to be discussed separately in proposed Rule 7.35(f)(3)(B). This proposed difference is based on proposed Rule 7.35(b)(2), discussed above, that the working time for an order participating in an Auction would be its entry time. The Exchange also proposes a substantive difference to proposed Rule 7.35(f)(3)(B) as compared to the NYSE Arca and NYSE American versions of the rule to reflect that DMM After-Auction Orders would be processed before other orders. As discussed above, DMM After-Auction Orders are intended to help facilitate the DMM's compliance with the Rule 104(f)(ii) obligation to maintain continuity with reasonable depth, particularly after an Auction. Accordingly, the Exchange proposes that when it begins processing orders that were received during the Auction Processing Period, DMM After-Auction Orders would be processed first.[55] The Exchange believes that because the DMM has an obligation to maintain price continuity, the DMM After-Auction Orders would be more likely to be priced to closely correlate to the Auction Price and therefore quoting this interest before other orders that were received during the Auction Processing Period would promote a fair and orderly

[52] The reference to ''certain'' DMM Orders is to distinguish DMM Orders that are entered via the algorithmic interface for the DMM to facilitate the Auction pursuant to Rules 104(b) and (a)(2) or (3), described above. DMM Orders entered via this functionality would be accepted during the Pre-Auction Freeze and would be eligible to participate in the Auction. DMM Orders not entered via this functionality would be accepted during the Auction Processing Period, but would not be eligible to participate in the applicable Auction, as provided for in the first sentence of proposed Rule 7.35(e). In either case, DMM Orders would mean an order as defined in Rule 7.31.

[53] *See* discussion *infra* regarding proposed Rule 7.35B(a)(1).

[54] *See* Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR–NYSE–2018–26) (Approval Order).

[55] As proposed in Rule 7.35(f)(3)(A), the first quote that would be published after an Auction would be based on unexecuted orders that were eligible to participate in the Auction but did not. Proposed Rule 7.35(f)(3)(B) concerns orders that were not eligible to participate in the Auction and how they would be released into continuous trading.

transition from the Auction to continuous trading.[56]

• Fourth, the Exchange proposes a non-substantive change that proposed Rule 7.35(f)(3)(D) would be based on the last stand-alone paragraph NYSE Arca Rule 7.35–E(h)(3)(C), without any substantive differences.

• Finally, the Exchange proposes additional differences between proposed Rules 7.35(e) and (f) as compared to NYSE Arca Rules 7.35–E(g) and (h) and NYSE American Rules 7.35E(g) and (h) to reflect the differences between the operation of the Exchange and those markets. Specifically, because these proposed rules would be applicable only to Exchange-listed securities and such securities would be eligible to trade during the Core Trading Session only, there is no Auction Imbalance Freeze before the Core Open Auction, and the Exchange does not offer the Proactive if Locked/Crossed Modifier, the Exchange proposes differences from the NYSE Arca and NYSE American rules to remove references relating to transitions of trading sessions and the Early Open Auction, Auction Imbalance Freezes, the Proactive if Locked/Crossed Modifier, and also to use Pillar terminology applicable to the Exchange.

Short Sale Period. Proposed Rule 7.35(g) would provide that during a Short Sale Period, as defined in Rule 7.16(f), Sell Short MOO and MOC Orders in Auction-Eligible Securities would be ranked for purposes of Auction Imbalance Information and allocated in an Auction as Priority 2-Display Orders at the Permitted Priced (as defined in Rule 7.16(f)).[57] This proposed rule text is based in part on Commentary .01 to NYSE Arca Rule 7.35–E with a substantive difference to reference MOO and MOC Orders specifically, rather than referring to Market Orders more generally, and not to reference Market Imbalance, which would not be provided on the Exchange. The Exchange proposes non-substantive differences to update the order of the rule text, as compared to the NYSE Arca Rule, to use NYSE Pillar terminology.

Proposed Rule 7.35(g)(2) would provide that sell short orders that are included in the Auction Imbalance Information would be adjusted to a Permitted Price as the NBB moves both up and down. This proposed rule text is based on Commentary .01(b) to NYSE Arca Rule 7.35–E.

Miscellaneous. Proposed Rule 7.35(h) would provide that whenever in the judgment of the Exchange the interests of a fair and orderly market so require, the Exchange may adjust the timing of or suspend the auctions set forth in this Rule with prior notice to member organizations. This proposed rule text would be new for Pillar Auction Rules and is based on NYSE Arca Rule 7.35–E(i) and NYSE American Rule 7.35E(i) with a non-substantive difference to reference member organizations rather than ETP Holders.

Proposed Rule 7.35(i) would provide that for purposes of Rule 611(b)(3) of Regulation NMS, an Auction is a single-priced opening, reopening, or closing transactions and may trade through any Away Market's Protected Quotations. This proposed rule text would be new for Pillar Auction Rules and is based on both Rule 611(b)(3) of Regulation NMS[58] and NYSE Arca Rule 7.35–E(j) and NYSE American Rule 7.35E(j) without any substantive differences.

Proposed Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions)

Proposed Rule 7.35A would set forth the process for DMM-facilitated Core Open and Trading Halt Auctions.

DMM and Floor Broker Responsibilities. Proposed Rule 7.35A(a) would set forth both the DMM and Floor broker responsibilities for the opening and reopening of securities, and is based on Rule 123D(a)(1) and 123D(b). Rule 123D(b) sets forth responsibilities for both DMMs and Floor brokers relating to their unique roles on the Trading Floor with respect to the opening and reopening of securities. On Pillar, the Exchange will continue to operate a Trading Floor under substantively the same rules as the Current Auction Rules, and therefore the Exchange proposes to include the responsibilities described in Rule 123D(b) in the Pillar Auction Rules, modified as described below.

Proposed Rule 7.35A(a) would provide that it is the responsibility of each DMM to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause, while at the same time not unduly hasty, particularly when at a price disparity from the Consolidated Last Sale Price. This proposed rule text is based on Rule 123D(a)(1) with a non-substantive difference to use Pillar terminology.

The Exchange proposes a substantive difference to proposed Rule 7.35A(a) as compared to Rule 123D(a)(1). Specifically, under the current rule, for the opening, the DMM should look at the prior close's price for determining whether the opening price would be at a price disparity. For reopenings, the DMM should look at the last price on the Exchange to determine whether the reopening price would be at a price disparity. On Pillar, the Exchange proposes that for both the Core Open and Trading Halt Auctions, the Consolidated Last Sale Price should be used to determine whether there is a price disparity.

For a Core Open Auction that takes place at 9:30 a.m. (e.g., if a DMM facilitates the Core Open Auction electronically), this proposed rule change would have minimal difference from the current rule because at that time, the definition of Consolidated Last Sale Price means the Official Closing Price of a security, which may be the prior close's price on the Exchange.[59] For a Core Open Auction that takes place after 9:30 a.m. and for which there are consolidated last-sale eligible trades on other exchanges, this proposed rule change would represent a substantive difference because the DMM should look at any price disparity between the proposed Core Open Auction Price and how the security is already trading on other markets, rather than the prior close price. The Exchange proposes a similar difference for Trading Halt Auctions, as the DMM should look at the Consolidated Last Sale Price, rather than the Exchange's last sale price, to determine whether there is a price disparity. The Exchange believes these proposed substantive differences would reflect that there may be more recent trading activity on another exchange, and such price may reflect a more recent valuation for a security with which to assess whether an Auction Price would be at a price disparity.

Proposed Rules 7.35A(a)(1)–(5) are based on 123D(b) as follows:

• Proposed Rule 7.35A(a)(1) would provide that openings and reopenings should reflect the professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders in the Exchange

[56] The Exchange notes that pursuant to proposed Rule 7.35(f)(3)(A), unexecuted orders that were eligible to trade in the Auction would be quoted ahead of orders referenced in proposed Rule 7.35(f)(3)(B). Accordingly, DMM Auction-Only Orders would not be quoted ahead of orders that arrived before the Auction Processing Period.

[57] *See* Proposed Rule 7.35(g)(1).

[58] 17 CFR 242.611(b).

[59] *See* proposed Rule 7.35(a)(11(a), discussed *supra.* As noted above, if there is no Closing Auction of one round lot or more, the Official Closing Price would be based on the last consolidated last-sale eligible price rather than the last Exchange sale price, and in such scenario, use of the Official Closing Price in proposed Rule 7.35A(a) would differ from the price that would be used under Rule 123D(a)(1).

Book. This proposed rule text is based on the first sentence of the first paragraph of Rule 123D(b), with non-substantive differences to use Pillar terminology and streamline the rule text.

• Proposed Rule 7.35A(a)(2) would provide that to the best of their ability, at the point of sale on the Trading Floor, DMMs should provide timely and impartial information at all phases of the opening or reopening process and that DMM units are responsible for ensuring that adequate personnel are available to assist in the fair and orderly opening or reopening of all securities registered with that DMM unit. This proposed rule text is based on the second and third sentences of the first paragraph of Rule 123D(b) with non-substantive differences to use Pillar terminology and streamline the rule text.

• Proposed Rule 7.35A(a)(3) would relate to Floor broker responsibilities and would provide that:

> Floor brokers should make every effort to ascertain their customers' interest as early as possible and to inform the DMM so that such interest can be factored into the opening or reopening process. Floor brokers should communicate to their customers the problems caused by delaying their interest until the last minute. Floor brokers should not expect to be able to delay the opening or reopening to accommodate customer reactions to changing prices. Once a relatively narrow range of opening or reopening possibilities is available, brokers and their customers should have sufficient information to electronically enter an order with a firm limit price.

This proposed rule text is based on the second, third, fifth, and sixth sentences of the second paragraph of Rule 123D(b) with non-substantive differences to use Pillar terminology and streamline the rule text. The Exchange does not propose to include the balance of the second paragraph of Rule 123D(b) in Rule 7.35A(a)(3) as such rule text is either duplicative of the rule text proposed to be retained or obsolete in today's trading environment (e.g., reference to orders or cancellations ''merely dropped on the counter'').

• Proposed Rule 7.35A(a)(4) would provide that Floor Officials participate in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. This proposed rule text is based on the first sentence of the third paragraph of Rule 123D(b) with non-substantive differences to use Pillar terminology and streamline the rule text. The balance of proposed Rule 7.35A(a)(4) would provide that DMMs should consult with a Floor Official under specified circumstances, which is based on the last sentence of the first paragraph and the fifth paragraph of Rule 123D(b).[60]

The Exchange proposes to specify in proposed Rules 7.35A(a)(4)(A)–(D) the specific circumstances when a DMM should consult with a Floor Official:

○ If a security would be opened more than 30 minutes after the scheduled beginning of Core Trading Hours, which the Exchange proposes to define as a ''Delayed Opening'' (see proposed Rule 7.35A(a)(4)(A)). This proposed rule text is based on the last sentence of the first paragraph of Rule 123D(b), which refers to delayed openings, and Rule 15(b)(1), which references 10:00 a.m. as a time by when an opening should occur before a pre-opening indication would be required, and thus constitutes a delayed opening.

○ If it is anticipated that the opening or reopening price would be at a significant disparity from the Consolidated Last Sale Price for such security (see proposed Rule 7.35A(a)(4)(B)). This proposed rule text is based on the fifth paragraph of Rule 123D(b) with the substantive difference described above that the DMM should use the Consolidated Last Sale Price rather than the prior close price (for openings) or last price on the Exchange (for reopenings).

○ If there is a significant imbalance (see proposed Rule 7.35A(a)(4)(C)). This proposed rule text is based on the fifth paragraph of Rule 123D(b).

○ In unusual situations (see proposed Rule 7.35A(a)(4)(D)). This proposed rule text is based on the last sentence of the first paragraph of Rule 123D(b).

• Proposed Rule 7.35A(a)(5) would provide that in determining when to open or reopen a security in circumstances described in Rule 7.35A(a)(4), a DMM should make every effort to balance timeliness with the opportunity for customer reaction and participation. The rule would further provide that when the DMM and Floor Official agree that all participants have had a reasonable opportunity to participate, the DMM should open or reopen the security. In addition, the rule would provide that the DMM has ultimate responsibility for opening or reopening a security and while a Floor Official's approval may be a mitigating factor, it would not exonerate the DMM if performance has been deemed unsatisfactory. This proposed rule text is based on the last paragraph of Rule 123D(b) and the last sentence of the third paragraph of Rule 123D(b). The Exchange proposes non-substantive differences to use Pillar terminology and streamline the rule text.

Proposed Rule 7.35A(a)(5) and subparagraphs (A)–(E) would further provide that in unusual market situations, the DMM should consider the following areas as indicative of poor DMM performance: (A) An opening or reopening price change that is not in proportion to the size of an imbalance; (B) absence of a pre-opening indication before a large Auction Price change; (C) inadequate support after a large Auction Price change, i.e., lack of sufficient continuity and depth in the aftermarket; (D) absence of trading without good cause or Floor Official approval (or an unjustified or unreasonably delayed opening or halt in trading); and (E) not obtaining appropriate Floor Official approval for opening delays. This proposed rule text is based on the fourth paragraph of Rule 123D(b) and related subparagraphs, with non-substantive differences to use Pillar terminology and streamline the rule text. In addition, the Exchange does not propose retaining text relating to obtaining appropriate Floor Official approvals for trading halts and wide price variations, as the Exchange no longer requires Floor Official approval for such scenarios.

Opening Without a Trade. Proposed Rule 7.35A(b) would provide that if there is no interest to conduct a Core Open Auction (for openings) or Trading Halt Auction (for reopenings), a DMM may open or reopen a registered security with a quote. This proposed rule text is based on Rule 123D(a)(1)(A), with non-substantive differences to use Pillar terminology.

Currently, there are circumstances when a security may not open on either a trade or a quote. This can occur when there is a new listing on the Exchange that does not have public pricing information or trading interest, such as the listing of a security on a when-issued basis. In such circumstances, under current rules, a DMM will publish a pre-opening indication if such security is not opened by 10:00 a.m., *i.e.,* a Delayed Opening, but such pre-opening indication may be wide because there is no buy and sell interest in the security entered on the Exchange. Rather, that pre-opening indication would represent the DMM's best understanding of the anticipated price of such security based on publicly-available information, such as research reports relating to that security. If that pre-opening indication does not attract

[60] Rules 46, 46A, and 47 specify how Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor Governors are appointed and their general authority under Exchange rules.

additional trading interest that can either trade or tighten the spread of the pre-opening indication, the DMM will not open the security.

The Exchange proposes to provide more transparency regarding this process in the Pillar Auction Rules. As proposed, Rule 7.35A(b)(1) would provide that if a security has not previously traded on the Exchange, a DMM is not obligated to open such security if there is no bid or offer or if the best bid and offer is wider than the pre-opening indication. The Exchange believes that this proposed rule text would provide clarity as to why a new listed security may not open on the Exchange.

DMM Opening Process. Proposed Rule 7.35A(c) would provide that a DMM may effectuate a Core Open or Trading Halt Auction manually or electronically (and if electronic, subject to Rule 104(b)(ii)). This proposed rule text is based on the first sentence of Rule 123D(a)(1)(B) with a non-substantive difference to use Pillar terminology to reference reopenings as well.

Proposed Rule 7.35A(c)(1) would provide that except under the conditions of Rules 7.35A(c)(2) and (c)(3), a DMM may not effect a Core Open or Trading Halt Auction under the conditions specified in subparagraphs (A)–(H) of Rule 7.35A. This proposed rule text is based on the second sentence of Rule 123D(a)(1)(B) with non-substantive differences to use Pillar terminology. The Exchange believes that adding each of the following circumstances of when the DMM may not effect an opening or reopening electronically will promote transparency regarding the circumstances of when a DMM must open a security manually:

- If a pre-opening indication has been published for the Core Open Auction (see proposed Rule 7.35A(c)(1)(A)). This proposed rule text is new for the Pillar Auction Rules and represents current functionality. Currently, if the DMM publishes a pre-opening indication in a security, that security must be opened manually by the DMM.
- If a DMM has begun the process to open a security manually, including by manually entering DMM Auction Liquidity (see proposed Rule 7.35A(c)(1)(B)). This proposed rule text is based in part on Rule 123D(a)(1)(B), which provides that Exchange systems will not permit a DMM to open a security electronically if a DMM has manually entered Floor interest, which for purposes of that rule, includes manually entering DMM Interest. As described above, the DMM uses a graphical user interface to manage the opening process. From that user interface, the DMM can publish a pre-opening indication or enter DMM Auction Liquidity. The Exchange believes that if a DMM is in the process of using such graphical user interface, including to manually enter DMM Auction Liquidity or to publish a pre-opening indication, that DMM is taking an action to indicate that the opening or reopening process will be effectuated manually. Accordingly, if a DMM engages in such process, the Exchange will not permit the DMM to open or reopen the security electronically.
- If it is an IPO Auction or Direct Listing Auction (see proposed Rule 7.35A(c)(1)(C)). This proposed rule text is new for the Pillar Auction Rules and represents current functionality. Currently, DMMs effectuate both IPO Auctions and Direct Listing Auctions, which generally take place after 9:30 a.m., manually.
- If the security is in a suspended or halt condition at the beginning of Core Trading Hours (see proposed Rule 7.35A(c)(1)(D)). Because openings effectuated electronically take place at the beginning of Core Trading Hours, if a security is not eligible to be opened at such time because it is suspended or halted, such security would need to be opened by the DMM manually.
- If it is a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual (see proposed Rule 7.35A(c)(1)(E)). The Exchange believes that allowing a DMM to reopen a security electronically following either a trading pause or a market-wide circuit breaker trading halt would promote the fair and orderly reopening of such security. This proposal is consistent with Rule 15(e)(6)(B), which provides that the DMM may open a security following a trading pause outside of the published indication. By contrast, the Exchange believes that if a security is the subject of a regulatory halt issued under Section 2 of the Listed Company Manual, e.g., news pending, such reopening warrants the attention of the DMM assigned to that security, and therefore the reopening should be effectuated manually.
- If there is no Consolidated Last Sale Price (see proposed Rule 7.35A(c)(1)(F)). As described below, the Exchange proposes to use the Consolidated Last Sale Price as the Imbalance Reference Price for the Core Open and Trading Halt Auctions. The Exchange believes that if there is no Consolidated Last Sale Price in a security, the Exchange would not have sufficient information to provide to a DMM for opening a security electronically. Accordingly, the Exchange proposes that in such scenario, the DMM must open the security manually.
- If the Core Open or Trading Halt Auction Price would be more than 4% away from the Consolidated Last Sale Price (see proposed Rule 7.35A(c)(1)(G)). This proposed rule text is based on Rule 123D(a)(1)(B)(i)(a) and (b), with the substantive difference, described above, that the Exchange would use the Consolidated Last Sale Price as the reference price for this calculation rather than the Official Closing Price (for openings) or last price on the Exchange (for reopenings). As noted above, the Exchange believes that using the Consolidated Last Sale Price, as defined in proposed Rule 7.35(a)(11)(1), would likely reflect a more recent valuation in a security with which to measure whether the opening or reopening would be at a price disparity. The Exchange proposes to use the same percentage parameter as under the current rule.
- If the paired volume for the Core Open or Trading Halt Auction would be more than (i) 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter or (ii) 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter (see proposed Rule 7.35A(c)(1)(H) and subparagraphs (i) and (ii)). This proposed rule text is based on Rule 123D(a)(1)(B)(i)(c) with a non-substantive difference to use the term ''paired volume'' instead of ''matched volume'' and use Pillar terminology. The Exchange also proposes a difference to reflect volumes in round lots rather than in number of shares. For securities that trade with a round lot of 100 shares, the proposed rule would be unchanged from the current rule, which expresses the volume requirements in terms of 150,000 shares, 100,000 shares, and 500,000 shares, respectively. The Exchange believes, however, that if a security trades in a round lot less than 100 shares, expressing the volume in number of shares would result in higher relative requirements for such securities to be opened manually. The Exchange believes that describing volume requirements in round lots would better reflect the level of volumes of securities with lower-sized round lot units that would warrant an opening to be effected manually.

Proposed Rule 7.35A(c)(2) would provide that if as of 9:00 a.m., the E-mini S&P 500 Futures are +/−2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the

Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening or reopening electronically if the Auction Price would be up to 8% away from Consolidated Last Sale Price, without any volume limitations. This proposed rule text is based on Rule 123D(a)(1)(B)(ii) with non-substantive differences to use Pillar terminology. The Exchange proposes a similar substantive difference, as described above, to use the Consolidated Last Sale Price as the reference price for determining the percentage parameter. Otherwise, this rule text is unchanged from the Current Auction Rules.

Proposed Rule 7.35A(c)(3) would provide that when reopening a security following a trading pause under Rule 7.11 or a market-wide halt under Rule 7.12, if a pre-opening indication has been published in a security under paragraph (b) of this Rule, a DMM may not reopen such security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication. This proposed rule text is based on Rule 123D(a)(1)(B)(iii) with non-substantive differences to cross-reference Pillar rules and use Pillar terminology. Otherwise, this rule text is unchanged from Current Auction Rules.

Pre-Opening Indications. Proposed Rule 7.35A(d) and its subparagraphs are based on Rule 15(a)–(f) relating to pre-opening indications. Except for the few substantive differences described below, the Exchange does not propose any differences from the Current Auction Rules of when a pre-opening indication would be required.

Proposed Rule 7.35A(d) would provide that a pre-opening indication would include the security and the price range within which the Auction Price is anticipated to occur and that a pre-opening indication would be published via the securities information processor and proprietary data feeds. This proposed rule text is based on Rule 15(a) with a non-substantive difference to use the term ''Auction Price'' instead of ''opening price.''

Proposed Rule 7.35A(d)(1) would specify the conditions for publishing a pre-opening indication and is based on Rule 15(b).

• Proposed Rule 7.35A(d)(1)(A) would provide that a DMM would publish a pre-opening indication, as described in paragraph (d)(4) of this Rule, before a security opens or reopens if (i) the Core Open or Trading Halt Auction Price is anticipated to be a change of more than the ''Applicable Price Range,'' as specified in proposed Rule 7.35A(d)(3), from a specified ''Indication Reference Price,'' as specified in proposed Rule 7.35A(d)(2), or (ii) it is a Delayed Opening. This proposed rule text is based on Rule 15(b)(1) with non-substantive differences to use Pillar terminology, including reference to a Core Open or Trading Halt Auction Price, use of the new defined term ''Delayed Opening,'' and use of the term ''Indication Reference Price'' instead of ''Reference Price.'' The Exchange also proposes to reference reopens in addition to opens.[61]

• Proposed Rule 7.35A(d)(1)(B) would provide that when making the determination of what the Auction Price will be, the DMM will take into consideration all interest eligible to participate in the Core Open or Trading Halt Auction, including electronically-entered orders, and DMM Interest. This proposed rule text is based on Rule 15(b)(2) with non-substantive differences to use Pillar terminology. On Pillar, the Exchange will not publish a pre-opening indication if the DMM is unable to do so because of systems or a technical issue. Accordingly, the Exchange does not propose to include in the Pillar Auction Rules rule text based on Rule 15(b)(3), which provides that if a DMM is unable to publish a pre-opening indication for one or more securities due to a systems or technical issue, the Exchange may publish a pre-opening indication for that security(ies).

Proposed Rule 7.35A(d)(2) would address Indication Reference Prices, and is based on Rule 15(c), which refers to ''Reference Price.'' In the Pillar Auction Rules, the Exchange proposes to use the term ''Indication Reference Price'' in connection with pre-opening indications to distinguish it from the use of the term ''Imbalance Reference Price,'' described above.[62]

Proposed Rule 7.35A(d)(2)(A) would provide that the Indication Reference Price for a security, other than an American Depository Receipt (''ADR''), would be:

• The security's last Official Closing Price on the Exchange, adjusted as applicable based on the publicly disclosed terms of a corporate action (see proposed Rule 7.35A(d)(2)(A)(i)). This proposed rule text is based on Rule 15(c)(1)(A) without any differences.[63]

• The security's offering price in the case of an IPO (see proposed Rule 7.35A(d)(2)(A)(ii)). This proposed rule text is based on Rule 15(c)(1)(B) with non-substantive difference to use the defined term of IPO.

• The security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange (''transferred security'') (see proposed Rule 7.35A(d)(2)(A)(iii)). This proposed rule text is based on Rule 15(c)(1)(C) without any differences.

• For a security that is a Direct Listing that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security (see proposed Rule 7.35A(d)(2)(A)(iv). This proposed rule text is based on Rule 15(c)(1)(D) with non-substantive difference to use Pillar terminology, including the proposed defined term ''Direct Listing.''

• For a security that does not fall under proposed Rule 7.35A(d)(2)(A)(i)–(iv) or (d)(2)(B) and for which there is limited publicly-available pricing available, a price as determined pursuant to proposed Rule 1.1(s)(1)(F). This proposed method of determining a derived last sale price is based in part on current Rule 123C(e)(i)(C), which specifies that when determining the Official Closing Price for a new listing that does not have any last-sale eligible trades on the Exchange on its first trading day, the Official Closing Price will be based on a derived last sale associated with the price of such security before it begins trading on the Exchange. For purposes of determining the Indication Reference Price for a pre-opening indication, proposed Rules 7.35A(d)(2)(A)(i)–(iv) and (B) identify known prices that can be used. However, there are circumstances when there is limited publicly-available information about how a security should be priced, such as for a new listing that is a when-issued security or emerging from bankruptcy. In such case, the Exchange believes that the Indication Reference Price should be based on the price that is already

[61] Supplementary Material .10 to Rule 15 provides that unless otherwise specified in Rule 15, references to an opening transaction include a reopening transaction following a trading halt or pause in a security. Rather than include that commentary in Rule 7.35A, the Exchange proposes that proposed rule text based on Rule 15 would be modified to reflect when such rule would be applicable to a reopening transaction.

[62] The Indication Reference Price is not a publicly disseminated value, but rather a reference price used by the DMM to determine whether to publish a pre-opening indication. The actual pre-opening indication price range is based on the buy and sell orders in the Exchange Book, not on the Indication Reference Price.

[63] The Exchange recently amended Rule 15(c)(1). *See* Securities Exchange Act Release No. 84755 (December 7, 2018), 83 FR 64168 (December 13, 2018) (SR–NYSE–2018–60) (Notice of filing and immediate effectiveness of proposed rule change).

determined pursuant to proposed Rule 1.1(s)(1)(F).

Proposed Rule 7.35A(d)(2)(B) would provide that the Indication Reference Price for an ADR would be:

• The closing price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market concludes after trading on the Exchange for the previous day has ended (see proposed Rule 7.35A(d)(2)(B)(i)). This proposed rule text is based on Rule 15(c)(2)(A) without any differences.

• Based on parity with the last sale price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market is open for trading at the time of the opening on the Exchange (see proposed Rule 7.35A(d)(2)(B)(ii)). This proposed rule text is based on Rule 15(c)(2)(B) without any differences.

Proposed Rule 7.35A(d)(2)(C) would provide that the Indication Reference Price for reopening a security following a halt would be the Exchange Last Sale Price. This proposed rule text is based on Rule 15(c)(2)(C) with a difference to use the Pillar term ''Exchange Last Sale Price'' rather than the term ''last reported sale price on the Exchange.'' In most circumstances, use of the term ''Exchange Last Sale Price'' would be the same as under the current rule's use of the term ''last reported sale price.'' Where there could be divergence if the Official Closing Price is based on the last consolidated last-sale eligible price in a security, as proposed to be defined in Rule 1.1, described above. For the reasons discussed above of why the Exchange believes that this is an appropriate price to use for the Official Closing Price if there is no closing auction, the Exchange similarly believes that such price would be appropriate for using as the Indication Reference Price.

Proposed Rule 7.35A(d)(3) would concern the Applicable Price Range, and is based on Rule 15(d) without any differences. Proposed Rule 7.35A(d)(3)(A) would provide that except under the conditions set forth in proposed Rule 7.35A(d)(3)(B), the Applicable Price Range for determining whether to publish a pre-opening indication would be 5% for securities with an Indication Reference Price over $3.00 and $0.15 for securities with an Indication Reference Price equal to or lower than $3.00. This proposed rule text is based on Rule 15(d)(1) with non-substantive differences to use Pillar terminology and to update the rule cross references.

Proposed Rule 7.35A(d)(3)(B) would provide that if as of 9:00 a.m., the E-mini S&P 500 Futures are +/−2% from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 7.12, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, the Applicable Price Range for determining whether to publish a pre-opening indication would be 10% for securities with an Indication Reference Price over $3.00 and $0.30 for securities with an Indication Reference Price equal to or lower than $3.00. This proposed rule text is based on Rule 15(d)(2) with non-substantive differences to use Pillar terminology and update the rule cross-reference.[64]

Proposed Rule 7.35A(d)(4) would specify the procedures for publishing a pre-opening indication and that the DMM would use the procedures specified in subparagraphs (A)–(G) of that rule when publishing a pre-opening indication. This proposed rule text is based on Rule 15(e) without any differences.

• Proposed Rule 7.35A(d)(4)(A) would provide that publication of a pre-opening indication would require the supervision and approval of a Floor Governor. This proposed rule text is based on Rule 15(e)(1) without any differences.

• Proposed Rule 7.35A(d)(4)(B) would provide that a pre-opening indication must be updated if the Core Open or Trading Halt Auction Price would be outside of a published pre-opening indication. This proposed rule text is based on Rule 15(e)(2) with a non-substantive difference to use Pillar terminology.

• Proposed Rule 7.35A(d)(4)(C) would provide that if the pre-opening indication is a spread wider than $1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of $1.00 or less before opening or reopening the security, as may be appropriate for the specific security. This proposed rule text is based on Rule 15(e)(3) with a non-substantive difference to reference reopenings in addition to openings.

• Proposed Rule 7.35A(d)(4)(D) would provide that after publishing a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security. This proposed rule text is based on Rule 15(e)(4) without any differences.

○ Proposed Rule 7.35A(d)(4)(D)(i) would provide that when using the Applicable Price Range specified in Rule 7.35A(d)(3)(A), a minimum of three minutes must elapse between publication of the first indication and a security's opening or reopening. If more than one indication has been published, a security may be opened or reopened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the first indication. However, the DMM may open or reopen a security less than the required minimum times after the publication of a pre-opening indication if the Auction Price would be at a price within the Applicable Price Range. This proposed rule text is based on Rule 15(e)(4)(A) with non-substantive differences to update the rule cross reference, to include references to reopenings, and to use Pillar terminology.

○ Proposed Rule 7.35A(d)(4)(D)(ii) would provide that when using the Applicable Price Range specified in Rule 7.35A(d)(3)(B), a minimum of one minute must elapse between publication of the first indication and a security's opening or reopening. If more than one indication has been published, a security may be opened or reopened without waiting any additional time. This proposed rule text is based on Rule 15(e)(4)(B) with non-substantive differences to update the rule cross reference and to include references to reopenings.

• Proposed Rule 7.35A(d)(4)(E) would provide that if trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted. This proposed rule text is based on Rule 15(e)(5) without any differences.

• Proposed Rule 7.35A(d)(4)(F) and subparagraphs (i)–(iii) would provide that when reopening a security following a trading pause under Rule 7.11: (i) A pre-opening indication may be published without prior Floor Governor approval; (ii) a pre-opening indication does not need to be updated before reopening the security, and the security may be reopened outside of any prior indication; and (iii) the reopening is not subject to the minimum waiting time requirements in Rule 7.35A(d)(4)(D). This proposed rule text is based on Rule 15(e)(6) and subparagraphs (A)–(C) with a non-substantive difference to update the rule cross references.

• Proposed Rule 7.35A(d)(4)(G) would provide that except as provided in proposed Rule 7.35A(d)(4)(F)(ii), if a pre-opening indication has been

[64] As discussed below, the Exchange proposes to amend Rule 7.12 to include rule text based on Rule 80B.

published, the Exchange would not permit the DMM to open or reopen the security outside of the last-published pre-opening indication range. This proposed rule text would be new for the Pillar Auction Rules and reflects that Exchange systems will enforce the requirement for a DMM to open or reopen a security within the price range of a pre-opening indication, except when reopening following a trading pause.

As discussed below, the Exchange proposes to set forth the process for temporary rule suspensions in paragraph (j) to proposed Rule 7.35A. Accordingly, the Exchange does not propose to include rule text based on Rule 15(f) in paragraph (d) in Rule 7.35A.

Auction Imbalance Information. Proposed Rule 7.35A(e) would specify Auction Imbalance Information for the Core Open and Trading Halt Auctions. Proposed Rule 7.35A(e)(1) would specify the time of publication of such Auction Imbalance Information as follows:

• Proposed Rule 7.35A(e)(1)(A) would provide that for the Core Open Auction, unless a security is halted, the Exchange would begin disseminating Auction Imbalance Information at 8:00 a.m. This proposed rule text is new and the Exchange proposes a substantive difference in the Pillar Auction Rules to begin disseminating Auction Imbalance Information at 8:00 a.m. rather than at 8:30 a.m., as specified in current Rule 15(g)(3)(A). The format of this rule text is based in part on NYSE Arca Rule 7.35–E(c)(1) and NYSE American Rule 7.35E(c)(1).

• Proposed Rule 7.35A(e)(1)(B) would provide that for a Trading Halt Auction, the Exchange would begin disseminating Auction Imbalance Information at the beginning of a halt or pause. This proposed rule text represents current functionality and is based in part on Rule 80C(b), which provides that the Exchange will begin disseminating Order Imbalance Information after a Trading Pause has commenced. The format of this rule text is based in part on NYSE Arca Rule 7.35–E(e)(1) and NYSE American Rule 7.35E(e)(1).

• Proposed Rule 7.35A(e)(1)(C) would provide that if a security is in a halt condition before or at the beginning of Core Trading Hours, the Exchange would disseminate Auction Imbalance Information for a Trading Halt Auction. This proposed rule text would be new for the Pillar Auction Rules and is based on NYSE Arca Rule 7.35–E(c)(1) and NYSE American Rule 7.35E(c)(1).

• Proposed Rule 7 .35A(e)(1)(D) would provide that the Exchange would not disseminate Auction Imbalance Information for the Core Open Auction or Trading Halt Auction if there is no Consolidated Last Sale Price. This proposed rule text would be new for the Pillar Auction Rules. Because, as described below, the Exchange would use the Consolidated Last Sale Price as the basis for determining the Imbalance Reference Price, if there is no Consolidated Last Sale Price, there would not be any information for the Exchange to determine Auction Imbalance Information.

Proposed Rule 7.35A(e)(2) would specify the content of Auction Imbalance Information. As proposed, for the Core Open and Trading Halt Auctions, the Exchange would disseminate Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price.

Proposed Rule 7.35A(e)(3) would specify how the Imbalance Reference Price would be determined. As proposed, the Imbalance Reference Price for the Auction Imbalance Information would be the Consolidated Last Sale Price unless a pre-opening indication has been published. This proposed rule text would be new for Pillar Auction Rules and represents the proposed substantive difference that the Exchange would use the Consolidated Last Sale Price rather than last reported sale price on the Exchange, as provided for in Rule 15(g)(2)(B), for determining the Imbalance Reference Price for the Core Open and Trading Halt Auctions. The Exchange believes that use of the Consolidated Last Sale Price rather than the last reported sale price on the Exchange would allow for a more recent price in a security to be used as the Imbalance Reference Price, thereby representing a more recent valuation of such security.

With the exception of using the Consolidated Last Sale Price rather than the last reported sale price on the Exchange, if a pre-opening indication has been published, the Exchange proposes to use the same method for determining the Imbalance Reference Price as under the Current Auction Rules. However, the Exchange proposes to use Pillar terminology to provide that in such case, the Imbalance Reference Price would be:

• The pre-opening indication bid price if the Consolidated Last Sale Price is lower than the bid price of the pre-opening indication (see proposed Rule 7.35A(e)(3)(A)). This is based in part on Rule 15(g)(2)(B)(i), which provides that if the bid price of the pre-opening indication of interest is higher than the last reported sale price for the security on the Exchange, the pre-opening indication bid price will serve as the reference price.

• The pre-opening indication offer price if the Consolidated Last Sale Price is higher than the offer price of the pre-opening indication (see proposed Rule 7.35A(e)(3)(B)). This is based in part on Rule 15(g)(2)(B)(ii), which provides that if the offer price of the pre-opening indication of interest is lower than the last reported sale price for the security on the Exchange, the pre-opening indication offer price will serve as the reference price.

• The Consolidated Last Sale Price if it is at or between the pre-opening indication bid and offer price (see proposed Rule 7.35A(e)(3)(C)). This is based in part on Rule 15(g)(2)(B)(iii), which provides that if the last reported sale price on the Exchange falls within the bid and offer of the pre-opening indication of interest for a security, the last sale price shall serve as the reference price. Because the term Consolidated Last Sale Price would incorporate how that price would be derived for a transferred security, the Exchange does not propose to include rule text based on Rule 15(g)(2)(B)(iv) in the Pillar Auction Rules.

Auction Imbalance Freeze. Proposed Rule 7.35A(f) would provide that there is no Auction Imbalance Freeze for a Core Open Auction or Trading Halt Auction and no restrictions on entry or cancellation of Auction-Only Orders before a Core Open Auction or Trading Halt Auction. This proposed rule text would be new for the Pillar Auction Rules and is based on current functionality as there are no restrictions on order entry or cancellation before the opening or reopening of trading under the Current Auction Rules. The Exchange believes that including this rule text in the Pillar Auction Rules would provide clarity and transparency to Exchange rules, particularly when comparing how auctions function on the Exchange as compared to NYSE Arca and NYSE American, which function differently.

Determining an Auction Price. Proposed Rule 7.35A(g) would provide that the DMM would be responsible for determining the Auction Price for a Core Open Auction or a Trading Halt Auction. This proposed rule text would be new for the Pillar Auction rules and is based on current functionality that as part of the DMM's role in facilitating auctions, the DMM determines the Auction Price based on buy and sell orders represented in the Exchange Book. The Exchange believes that including this detail in Exchange rules

provides clarity and transparency to the Exchange's auction process.

The rule would further provide that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied. This proposed rule text is based in part on Rule 115A(a)(1), which specifies that market interest is guaranteed to participate in the opening or reopening transaction.[65] Otherwise, this proposed rule text would be new for the Pillar Auction Rules, and is designed to promote clarity and transparency in Exchange rules relating to the Exchange's auction process.

Proposed Rule 7.35A(g)(1) would further provide that when facilitating the opening on the first day of trading of a Direct Listing that has not had recent sustained history of trading in a Private Placement prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security. This proposed rule text is from the last sentence of Rule 104(a)(2) with a non-substantive difference to use the defined term of ''Direct Listing.'' The Exchange proposes to move this rule text from Rule 104 to proposed Rule 7.35A(g)(1) because the responsibility described in the current rule relates to how an Auction Price is determined for a Direct Listing Auction, and the Exchange believes that including this text in proposed Rule 7.35A would consolidate requirements relating to the Exchange's auction process, thereby making the rules easier to navigate.[66]

Auction Allocation. Proposed Rule 7.35A(h) would specify how orders would be allocated in an Auction. As proposed, once an Auction Price has been determined, orders would be allocated in a Core Open Auction or Trading Halt Auction as follows:

- Better-priced orders, including the reserve interest of Reserve Orders, entered by the Book Participant or a Floor Broker Participant would be guaranteed to participate in the Auction at the Auction Price (see proposed Rule 7.35A(h)(1)). The Exchange proposes to use Pillar terminology in proposed Rule 7.35A(h)(1) to describe the same functionality as set forth in Rule 115A(a)(1) and Rule 115A(a)(1)(A), which provides that market interest is guaranteed to participate in the opening or reopening transaction. Under Rule 115A(a)(1), market interest includes the same types of orders defined in proposed Rules 7.35(a)(5)(A) and 7.35A(h)(1) as being guaranteed to participate in a Core Open or Trading Halt Auction.[67]
- At-priced orders and DMM Interest of any price would not be guaranteed to participate in the Auction (see proposed Rule 7.35A(h)(2)). The Exchange proposes to use Pillar terminology in proposed Rule 7.35A(h)(2) to describe the same functionality as set forth in Rules 115A(a)(1) and (a)(1)(B)–(C), including that DMM Interest is not guaranteed to participate in such Auctions. Proposed Rule 7.35A(h)(2) would further provide how at-priced orders would be allocated in an Auction as follows:
- First, orders ranked Priority 2—Display Orders, Opening D Orders, and LOO Orders would be allocated on parity by Participant pursuant to Rule 7.37(b)(2)—(7) (see proposed Rule 7.35A(h)(2)(A)). By cross-referencing Rule 7.37(b)(2)–(7), this proposed rule text makes clear that the allocation process for the Core Open Auction and Trading Halt Auction would follow the established Pillar parity allocation process.[68] The Exchange believes that if at-priced Opening D Orders or LOO Orders are participating in the Core Open or Trading Halt Auction at the Auction Price, such orders should be allocated together with displayed orders, which is how such orders are allocated under the Current Auction Rules. In addition, by cross referencing Rules 7.37(b)(5), (6), and (7), the proposed Rule provides specificity that allocations to each Participant, including the DMM, would be allocated consistent with those rules.
- Next, orders ranked Priority 3—Non-Display Orders would be allocated on parity by Participant pursuant to Rule 7.37(b)(2)–(7) (see proposed Rule 7.35A(h)(2)(B)). This proposed rule text would be applicable to the reserve interest of Reserve Orders, which are the only orders ranked Priority 3—Non-Display Orders eligible to participate in an Auction. By cross-referencing Rule 7.37(b)(2)—(7), this proposed rule text makes clear that the allocation process for the Core Open Auction and Trading Halt Auction will follow the established Pillar parity allocation process.
- Proposed Rule 7.35A(h)(3) would address the DMM Participant Allocation of at-priced orders in the Core Open and Trading Halt Auction. The Exchange proposes that the manner by which DMMs would participate in an Auction would differ from how they participate in allocations during continuous trading, described above. As proposed:
  - At-priced DMM Orders would be placed on the allocation wheel for an Auction based on the time of entry and any other orders or interest from such DMM would join that position on the allocation wheel (see proposed Rule 7.35A(h)(3)(A)). In such case, the DMM Order with the earliest entry time would establish that DMM Participant's position on the allocation wheel, consistent with Rule 7.37(b)(2)(B).[69] However, if the only DMM Interest available to participate in an Auction would be DMM Auction Liquidity or better-priced DMM Orders or both, such DMM Interest would be placed last on the allocation wheel. The Exchange proposes that in these scenarios, the DMM Interest would go last on the allocation wheel because such orders would either be repriced for the Auction (in the case of a better-priced DMM Order, which would be considered an at-priced order for the Auction Allocation) or entered right before the Auction (in the case of DMM Auction Liquidity). Because such DMM Interest is intended to be offsetting interest for an Auction, the Exchange does not believe that such DMM Interest should have time priority in how they are included in an allocation wheel over other orders that are eligible to participate in an Auction. This proposed functionality would be new on Pillar and is designed so that DMMs, who have the ability to enter buy and sell interest last in an Auction, would not receive any time priority for such interest.
  - A parity allocation to the DMM Participant would be allocated in price-time priority (see proposed Rule 7.35A(h)(3)(B)). As discussed above, a parity allocation to the DMM Participant would be based on the working time. However, in an Auction Allocation, DMM Interest may have more than one limit price, and the Exchange proposes that the parity allocation to the DMM Participant would be allocated among

[65] Under Rule 115A(a)(1)(A), market interest is defined as (i) Market and MOO Orders, (ii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iii) Floor broker interest entered manually by the DMM. The first two of these categories are described above in the definition of better-priced orders. The Exchange proposes that the DMM would not manually enter Floor broker interest for the Core Open or Trading Halt Auction; Floor brokers must represent their interest electronically.

[66] The Exchange proposes a related rule change to delete the last sentence of Rule 104(a)(2).

[67] *Id.*

[68] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13560–13561 (March 29, 2018) (SR–NYSE–2018–36) (Approval Order and discussion of how the Rule 7.37 Pillar parity allocation process differs from the current Rule 72 parity allocation process).

[69] Rule 7.37(b)(2)(B) provides that additional Participants are added to an allocation wheel based on time of entry of the first order entered by a Participant.

such DMM Interest in price-time priority, even though they all would participate in the Auction at a single price.

○ Both at-priced DMM Orders that do not receive an allocation and that lock other unexecuted orders and buy and sell better-priced DMM Orders would be cancelled after the Auction Processing Period concludes (see proposed Rule 7.35A(h)(3)(C)). As noted above, DMM Auction Liquidity that does not participate in an Auction cancels after the Auction. To provide for continuity in the market after the Auction, the Exchange also proposes to cancel DMM Orders with a limit price that either lock the Auction Price, *i.e.*, did not participate in the parity allocation, or are priced through the Auction Price, *i.e.*, a buy (sell) DMM Order priced higher (lower) than the Auction Price. The Exchange believes that cancelling such DMM Interest would ensure that there will not be orders that transition to continuous trading that lock or cross other orders in the Exchange Book.

SIP Modifier. Proposed Rule 7.35A(i) would provide that the Core Open Auction would be designated with a modifier to identify the opening quote, and if there is an opening trade, a modifier to identify the opening trade. The rule would further provide that the Trading Halt Auction would be designated with a modifier to identify it as a reopening trade. These SIP modifiers are consistent with how the Exchange functions under the Current Auction Rules and would be new rule text for the Pillar Auction Rules that is based on NYSE Arca Rule 7.35–E(c)(5) and (e)(11) and NYSE American Rule 7.35E(c)(5) and (e)(11).

Temporary Rule Suspensions. Current Rule 15(f) provides that the Exchange can temporarily suspend the requirement of pre-opening indications and current Rule 123D(c) provides that the Exchange can temporarily suspend DMM automated opening limitations or Floor Official approval requirements. In the Pillar Auction Rules, the Exchange proposes to consolidate these existing temporary suspension requirements in proposed Rule 7.35A(j).

Proposed Rule 7.35A(j)(1) would provide that if the CEO of the Exchange, or his or her designee, determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Core Open or Trading Halt Auction at the Exchange and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange, or his or her designees, may temporarily suspend the rules specified in proposed subparagraphs (A) and (B) of that Rule. This proposed rule text is based on Rule 15(f)(1) and Rule 123D(c)(1) with non-substantive differences to use Pillar terminology.[70]

Proposed Rule 7.35A(j)(1)(A) would specify the first set of rules that could be suspended. As proposed, under the circumstances described above, the Exchange could suspend the prohibition on a DMM opening a security electronically if the Core Open or Trading Halt Auction Price would be more than the price or volume parameters specified in proposed Rule 7.35A(c)(1)(G) and (H) of this Rule. This proposed rule text is based on Rule 123D(c)(1)(A) with non-substantive differences to use Pillar terminology and update the cross references.[71]

Proposed Rule 7.35A(j)(1)(B) would specify the second set of rules that could be suspended. As proposed, under the circumstances described above, the Exchange could suspend the requirement to publish pre-opening indications in a security under proposed Rule 7.35A(d) of this Rule prior to opening or reopening a security following a market-wide trading halt. This proposed rule text is based on Rule 15(f)(1) with non-substantive differences to update the cross reference.

Proposed Rule 7.35A(j)(2) would provide that when determining whether to temporarily suspend the specified paragraphs of this Rule, the CEO of the Exchange would:

- Consider the facts and circumstances that are likely to have Floor-wide impact for a particular trading session, including volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions (see proposed Rule 7.35A(j)(2)(A)). This proposed rule text is based on Rule 15(f)(2)(A) and Rule 123D(c)(2)(A) without any substantive differences.
- Notify the Chief Regulatory Officer of the Exchange (see proposed Rule 7.35A(j)(2)(B)). This proposed rule text is based on Rule 15(f)(2)(B) and Rule 123D(c)(2)(B) without any substantive differences.
- Inform the Securities and Exchange Commission staff as promptly as practicable of the temporary suspension (see proposed Rule 7.35A(j)(2)(C)). This proposed rule text is based on Rule 15(f)(2)(C) and Rule 123D(c)(2)(C) without any substantive differences.

Proposed Rule 7.35A(j)(3) would provide that a temporary suspension under this Rule would be in effect for the trading day on which it was declared only. This proposed rule text is based on Rule 15(f)(3) without any differences.

Proposed Rule 7.35A(j)(4) would provide that notwithstanding a temporary suspension of the requirement to publish pre-opening indications in a security under this Rule, a DMM may publish a pre-opening indication for one or more securities. This proposed rule text is based on Rule 15(f)(4) with a difference not to reference that the Exchange would publish a pre-opening indication. This proposed difference is based on the difference under the Pillar Auction Rules, described above, that the Exchange would not publish a pre-opening indication if a DMM is unable to do so.

Proposed Rule 7.35B (DMM-Facilitated Closing Auctions)

Proposed Rule 7.35B would set forth the process for DMM-facilitated Closing Auctions. As described in greater detail below, to promote consistency and transparency in the Pillar Auction Rules, if the functionality described in proposed Rule 7.35B is the same as the functionality described in proposed Rule 7.35A, the Exchange proposes to use the same subparagraph numbering for the two rules. For example, Auction Imbalance Information for the Opening and Trading Halt Auctions will be described in proposed Rule 7.35A(e) and the Auction Imbalance Information for the Closing Auction will be described in proposed Rule 7.35B(e). The Exchange believes that keeping these two rules as parallel as feasible would promote clarity, consistency, and transparency in Exchange rules.

DMM and Floor Broker Responsibilities. Proposed Rule 7.35B(a) would set forth both the DMM and Floor broker responsibilities for the closing of securities. Similar to the DMM and Floor broker responsibilities as

[70] Rule 123D(c)(1) currently provides that the temporary relief is available for a reopening following a market-wide circuit breaker. In harmonizing this rule text with current Rule 15(f)(1), the Exchange proposes that under the Pillar Auction Rules, the temporary rule suspension would be available for any scenario where a Floor-wide event would impact the fair and orderly reopening of securities, which include reopenings after a market-wide circuit breaker, plus other potential market-wide events.

[71] The Exchange does not propose to include in the Pillar Auction Rules a temporary suspension as described in Rule 123D(c)(1)(B) because the Exchange no longer requires Floor Official approval before a security can be halted.

described in proposed Rule 7.35A(a) above, DMMs and Floor brokers also have Floor-based roles in connection with the Closing Auction and the Exchange proposes to specify these requirements in proposed Rule 7.35B(a).

Proposed Rule 7.35B(a) would provide that it is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price. This proposed rule would be new for the Pillar Auction Rules and reflects current DMM responsibilities, as specified in Rule 104(a)(3), but with greater detail about how the DMM should facilitate the close of trading.

The proposed rule text is based in part on the Rule 123D(a)(1) text relating to the opening of trading, which is proposed to be included in proposed Rule 7.35A(a) for the Pillar Auction Rules. The Exchange believes that because the DMM responsibilities for the Closing Auction are similar to the DMM responsibilities for the Core Open and Trading Halt Auctions, the Closing Auction Rule should have parallel rule text. A proposed difference for the Closing Auction version would be that the DMM should look at price disparity from the Exchange Last Sale Price when determining when to close the security. The proposed rule also makes clear the current functionality that the Closing Auction would occur after the end of Core Trading Hours, but that the DMM has a responsibility to ensure that registered securities close as soon after the end of Core Trading Hours as possible, but that it does not need to be unduly hasty if there is a price disparity.

Proposed Rule 7.35B(a)(1) would specify how Floor Broker Interest would be entered for the Closing Auction. The functionality described in this proposed rule would be new for the Exchange. Currently, if a Floor broker orally represents a bid or offer at the point of sale before the close of trading, for such interest to be included in the closing transaction, the DMM must manually enter the details of the order on behalf of the Floor broker, including the security, side, size, limit price or if it is at market, and Floor broker badge number. The Exchange believes that in today's trading environment, this process introduces risk to the closing process because the DMM is responsible for both manually entering orders on behalf of potentially multiple Floor brokers in multiple securities and also facilitating the closing process for multiple securities. To reduce the burden on the DMM, the Exchange proposes that on Pillar, the Floor broker would be responsible for electronically entering interest that has been properly represented orally by the end of Core Trading Hours. While the DMM would still be responsible for validating such Floor broker-entered interest, the burden on the DMM would be minimized, which the Exchange believes would lead to a more efficient closing process.

As proposed, Floor Broker Interest would be eligible to participate in the Closing Auction provided that the Floor broker has electronically entered such interest before the Auction Processing Period for the Closing Auction begins. Proposed Rule 7.35B(a)(1)(A) would provide that for such interest to be eligible to participate in the Closing Auction, a Floor broker must:

- First, by the end of, but not after, Core Trading Hours, orally represent Floor Broker Interest at the point of sale, including symbol, side, size, and limit price (see proposed Rule 7.35B(a)(1)(A)(i)). This proposed rule text specifies the details of an order that a Floor broker must represent at the point of sale by the end of Core Trading Hours, e.g., not after 4:00 p.m. This rule text proposes a substantive difference from how Floor brokers can currently represent orders at the close because such orders would be required to include a limit price. Today, a Floor broker can represent an order at the close ''at market,'' which would not be supported on Pillar.
- Then, electronically enter such interest after the end of Core Trading Hours, and such electronic entry of Floor Broker Interest would not be subject to Limit Order Price Protection (see proposed Rule 7.35B(a)(1)(A)(ii)). This proposed text would be new functionality for the Pillar Auction Rules and represents the proposed new method to electronically enter orally-represented Floor Broker Interest into Exchange systems for participation in the Closing Auction. To distinguish this interest from orders entered by a Floor broker during Core Trading Hours, the Exchange proposes that such interest could be entered only after the end of Core Trading Hours. In addition, because such interest would be eligible to participate in the Closing Auction only, the Exchange proposes that it would not be subject to Limit Order Price Protection, as described in Rule 7.31(a)(2)(B).

Proposed Rule 7.35B(a)(1)(B) would provide that before Floor Broker Interest would be ranked for the Closing Auction, it must be electronically accepted by the DMM and that once accepted, Floor Broker Interest would be processed as an order ranked Priority 2—Display Orders from a Floor Broker Participant for purposes of inclusion in Closing Auction Imbalance Information and ranking and allocation in the Closing Auction. This proposed rule text would be new functionality for the Pillar Auction Rules and represents the more limited role that DMMs would have in processing Floor Broker Interest. The Exchange proposes that the DMM's electronic acceptance would serve to validate that the Floor broker had represented the Floor Broker Interest consistent with proposed Rule 7.35B(a)(1)(A).

In addition, as described above, the Exchange proposes to continue disseminating Closing Auction Imbalance Information until the Auction begins. Pursuant to proposed Rule 7.35B(a)(1)(B), Floor Broker Interest would be included in such Closing Auction Imbalance Information after it has been accepted by the DMM. Because such Floor Broker Interest must include a limit price, the Exchange proposes to process it as an order ranked Priority 2—Display Orders for purposes of Auction Imbalance Information.

In addition to the new functionality of including this interest in the Closing Auction Imbalance Information after 4:00 p.m., this proposed rule would represent new functionality of how Floor Broker Interest would be allocated in an Auction. Pursuant to Rule 123C(7)(a)(iii), Floor broker interest entered manually by the DMM is considered ''has-to-go'' interest and is currently guaranteed to participate in the closing transaction. In Pillar, the Exchange proposes a difference that Floor Broker Interest would be ranked as Priority 2—Display Orders. Whether such Floor Broker Interest would be guaranteed to participate in the Closing Auction would be based on its limit price, which is consistent with how other orders ranked Priority 2—Display Orders would be processed in the Closing Auction.[72]

Proposed Rule 7.35B(a)(1)(C) would provide that, after the end of Core Trading Hours, electronically-entered Floor Broker Interest could not be reduced in size or replaced, provided that, subject to Floor Official approval, a DMM can accept a full cancellation of electronically-entered Floor Broker Interest to correct a Legitimate Error. This proposed rule text would be new for the Pillar Auction Rules and represents current functionality that a Floor broker cannot change the terms of

[72] *See* discussion *infra* regarding proposed Rule 7.35B(h).

an order after the close of Core Trading Hours. The Exchange believes, however, that if there is a Legitimate Error with the electronically-entered order, the Floor broker should be able to cancel such order, but not replace it with a new order.[73]

Proposed Rule 7.35B(a)(2) would address DMM Interest and would provide that a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. This proposed rule text would be new for the Pillar Auction Rules and is based on the current Rule 104(a)(3) obligation for a DMM to supply liquidity as needed to facilitate the close of trading on the Exchange. Currently, the DMM can meet that obligation by entering or cancelling their own interest after 4:00 p.m. This proposed rule text would specify this functionality in the Pillar Auction Rules. Similar to Floor Broker Interest for the Closing Auction, the Exchange proposes that the entry of DMM Interest after the end of Core Trading Hours would not be subject to Limit Order Price Protection.

Closing Without a Trade. Proposed Rule 7.35B(b) would provide that if there is no interest to conduct a Closing Auction, a DMM may close a registered security without a trade and that in such case, the Official Closing Price for the security would be determined as provided for in Rule 1.1. As noted above, if there is no interest to conduct a closing transaction, the DMM is not required to conduct a closing transaction or publish a new quote. However, even if there is no closing transaction, there would be an Official Closing Price disseminated for such security. This proposed rule text would be new for the Pillar Auction Rules and is designed to promote clarity and transparency regarding the Closing Auction process in Exchange rules.

DMM Closing Process. Proposed Rule 7.35B(c) would provide that the DMM may effectuate a Closing Auction manually or electronically (see Rule 104(b)(ii)). This proposed rule text is based on Supplementary Material .10 to Rule 123C, which provides that closings may be effectuated manually or electronically (see Rule 104(b)). The Exchange proposes non-substantive differences to use Pillar terminology that mirrors proposed Rule 7.35A(c) relating to the DMM Opening Process.

Supplementary Material to Rule 123C further provides that Exchange systems will not permit a DMM to close a security electronically if a DMM has manually-entered Floor interest. The Exchange believes that specifying the following circumstances when a DMM would not be permitted to effect a Closing Auction electronically to the Pillar Auction Rules will promote transparency regarding the circumstances of when a DMM must close a security manually:

- The DMM has begun the process to close a security manually, including by manually entering DMM Auction Liquidity (see proposed Rule 7.35B(c)(1)(A)). This proposed rule text is based in part on the second sentence of Supplementary Material .10 to Rule 123C, which provides that Exchange systems will not permit a DMM to close a security electronically if a DMM has manually-entered Floor interest, which includes manual DMM interest. The proposed rule text is also consistent with proposed Rule 7.35A(c)(1)(B), described above. Specifically, the DMM uses a graphical user interface to manage the closing process. From that template, the DMM can validate Floor Broker Interest or enter DMM Auction Liquidity. The Exchange believes that if a DMM is in the process of using such graphical user interface, including to manually enter DMM Auction Liquidity, the DMM is taking an action to indicate that the closing process will be effectuated manually. Accordingly, if a DMM engages in such process, the Exchange would not permit the DMM to close the security electronically.
- Floor Broker Interest for the Closing Auction that has been electronically entered or requested to be cancelled has not yet been accepted by the DMM (see proposed Rule 7.35B(c)(1)(B)). This proposed rule text would be new for Pillar Auction Rules and is related to the proposed new functionality relating to Floor Broker Interest for the Closing Auction pursuant to proposed Rule 7.35B(a)(1). The Exchange proposes that if a DMM has accepted all Floor Broker Interest that has been entered, the DMM can effectuate the closing electronically. However, if a Floor broker has entered Floor Broker Interest or requested to cancel such interest, but the DMM has not yet accepted the instruction, the Exchange would not permit the DMM to effectuate the closing electronically.
- It is the first day of trading of a security that is the subject of an IPO or a Direct Listing and the security never opened (see proposed Rule 7.35B(c)(1)(C)). This proposed rule text would be new for Pillar Auction Rules and would specify how the DMM should process a security that is the subject of an IPO or a Direct Listing and never opened. In such case, the Exchange does not believe that the closing should be effectuated electronically.[74]
- The security is suspended or halted at the end of Core Trading Hours (see proposed Rule 7.35B(c)(1)(D)). This proposed rule text would be new for Pillar Auction Rules and is based on current functionality. The Exchange believes that if a security is halted or suspended at the end of Core Trading Hours, a DMM should not be permitted to effectuate a closing electronically because such security may still be suspended or halted when the DMM attempts to conduct such closing electronically. If the suspension or halt state is lifted shortly after 4:00 p.m., the Exchange believes that if there is interest to conduct a Closing Auction, the DMM should facilitate that closing process manually.
- There is no Exchange Last Sale Price (see proposed Rule 7.35B(c)(1)(E)). This proposed rule text would be new for Pillar Auction Rules and is based on current functionality. As described below, the Exchange proposes to use the Exchange Last Sale Price as the Imbalance Reference Price for the Closing Auction. The Exchange believes that if there is no Exchange Last Sale Price in a security, the Exchange would not have sufficient information to provide to a DMM for closing a security electronically. Accordingly, the Exchange proposes that in such scenario, the DMM must close the security manually.
- A temporary suspension under proposed Rule 7.35B(j)(2)(A) of this Rule has been invoked (see proposed Rule 7.35B(c)(1)(F)). This proposed rule text would be new for the Pillar Auction Rules and reflects that if Rule 7.34(a)(2)(B) has been suspended pursuant to proposed Rule 7.35B(j)(2)(A) to permit the solicitation and entry of orders after the end of Core Trading Hours because of extreme order imbalances at or near the close, the Exchange believes that such closing should be effectuated manually.
- The Closing Auction Price would be more than a designated percentage away from the Exchange Last Sale Price (see proposed Rule 7.35B(c)(1)(G)). This

[73] For example, if a Floor broker orally represents Floor Broker Interest to buy with a limit price of 10.02, but electronically enters it with a limit price of 100.2, the Floor broker should be able to fully cancel that order, but not replace it.

[74] Because the Exchange accepts Auction-Only Orders intended for the Closing Auction beginning at 6:30 a.m., it is possible for a security to never open, and yet have interest that is eligible for a Closing Auction and that could trade. The Exchange does not believe that the DMM should electronically effect such a closing. Rather, in such rare circumstances, the Exchange believes that the DMM should manage such closing process manually.

proposed rule text would be new for the Pillar Auction Rules and represents current functionality of when the DMM is not permitted to effectuate a closing electronically. Similar to how current Rule 123D(a)(1)(B)(i)(a) and (b) function for the open, today, the Exchange does not permit the DMM to effectuate a closing electronically if the DMM were to close a security a designated percentage away from the last sale price on the Exchange. In the Pillar Auction Rules, the Exchange proposes to specify this limitation.

As proposed, the Exchange would use the Exchange Last Sale Price as the reference price for determining whether the Closing Auction Price would be at a price disparity requiring a manual closing process. The Exchange further proposes that if the Exchange Last Sale Price were $25.00 and below, the designated percentage would be 5%, if the Exchange Last Sale Price were $25.01 to $50.00, the designated percentage would be 4%, and if the Exchange Last Sale Price were above $50.00, the designated percentage would be 2%. These are the current designated percentages that the Exchange uses to determine whether to permit a DMM to effectuate a closing electronically. The Exchange believes that if a Closing Auction Price were to be outside these proposed designated percentages, the closing process should be effected manually.

- The paired volume for the Closing Auction would be more than 1,000 round lots for such security (see proposed Rule 7.35B(c)(1)(H)). This proposed rule text would be new for the Pillar Auction Rules and represents current functionality of when the DMM is not permitted to effectuate a closing electronically. Similar to current Rule 123D(a)(1)(B)(i)(c) and proposed Rule 7.35A(c)(1)(H) for the opens and reopens, the Exchange proposes that the close should not be effectuated electronically if the volume would exceed specified parameters. Today, the Exchange does not permit a closing transaction if it would be over 100,000 shares in size. In the Pillar Auction Rules, the Exchange proposes to specify this requirement in round lots.

Closing Imbalance. Proposed Rule 7.35B(d) would specify the requirements relating to Closing Imbalances, and is based on Rules 123C(1)(b), (1)(d), (4) and (5).

Proposed Rule 7.35B(d) would specify that a Closing Imbalance publication would include the Imbalance and the Side of the Imbalance. This proposed rule text is based in part on Rule 123C(4), which describes how the buy or sell side imbalance is determined. The proposed rule would also provide that the Imbalance Reference Price for a Closing Imbalance would be the Exchange Last Sale Price. This proposed rule text is based in part on Rule 123C(4)(a)(i) and (ii), which specifies that the last sale in a security, as reported to the Consolidated Tape, would be the reference price. The Exchange proposes a substantive difference on Pillar to use the Exchange Last Sale Price, as defined in proposed Rule 7.35(a)(11)(B) above. As noted above, and as described below, the Exchange proposes to use the Exchange Last Sale Price for any scenario relating to the Closing Auction that would need a reference price, including as the reference price for determining price disparity to permit a DMM to close a security electronically or as the Imbalance Reference Price for Auction Imbalance Information. The Exchange believes it would promote consistency in Exchange rules to use the same price for all of these purposes.

As a corollary, the Exchange proposes that it would not disseminate a Closing Imbalance if there is no Exchange Last Sale Price. This would be new rule text for the Pillar Auction Rules and reflects that if there is no sale information for a security, the Exchange would not be able to calculate an imbalance, and therefore would not be able to assess whether to publish a Closing Imbalance. Finally, proposed Rule 7.35B(d) would provide that a Closing Imbalance would be disseminated to the securities information processor and that a Regulatory Closing Imbalance would also be disseminated to proprietary data feeds. This proposed rule text represents current functionality and is based in part on Rules 123C(5)(a) and (b), which provides that both the Mandatory MOC/LOC Imbalance Publication and Informational Imbalance Publication are published on the Consolidated Tape. This proposed rule text is also based in part on Rule 123C(6)(a)(vi), which references the Mandatory MOC/LOC Imbalance Publication as part of the Order Imbalance Information.

Proposed Rule 7.35B(d)(1) would specify the requirements for publication of a Regulatory Closing Imbalance. As proposed, at the Closing Auction Imbalance Freeze Time (as defined above in proposed Rule 7.35(a)(7)), if the Closing Imbalance is 500 round lots or more, the Exchange would disseminate a Regulatory Closing Imbalance. This proposed rule text is based on Rule 123C(1)(d)(i) and the first sentence of Rule 123C(5)(a) with non-substantive difference to use Pillar terminology and a substantive difference to use round lots rather than the current rule, which requires the imbalance amount to be 50,000 shares. The Exchange believes that using round lots would better reflect the significance of the imbalance, particularly for securities with a round-lot size under 100 shares.

Proposed Rule 7.35B(d)(1)(A) would provide that if, at the Closing Auction Imbalance Freeze Time, the Closing Imbalance is less than 500 round lots, but is otherwise significant in relation to the average daily trading volume in the security, a DMM may disseminate a Regulatory Closing Imbalance only with prior Floor Official approval. This proposed rule text is based on the second sentence of Rule 123C(5)(a) with non-substantive differences to use Pillar terminology and a substantive difference to use round lots rather than refer to the imbalance size in shares.

Proposed Rule 7.35B(d)(1)(B) would provide that a Regulatory Closing Imbalance would be a one-time publication that should not be updated. This proposed rule text is based on Rule 123C(5)(A), which states that the Regulatory Closing Imbalance is published as soon as practicable after 3:50 p.m. This proposed rule text distinguishes the Regulatory Closing Imbalance from the Auction Imbalance Information, which would be updated every second.

Proposed Rule 7.35B(d)(1)(C) would provide that a Regulatory Closing Imbalance would be disseminated at the Closing Auction Imbalance Freeze Time regardless of whether the security has not opened or is halted or paused at that time. This proposed rule text is based in part on Rule 123C(5)(c) with non-substantive differences to use Pillar terminology. The Exchange also proposes a substantive difference because under Current Auction Rules, when a trading halt in a security is in effect at 3:50 p.m. but is lifted prior to the close of trading in the security, a Mandatory MOC/LOC Imbalance Publication should be published as close to the resumption of trading as practicable. By contrast, under the Pillar Auction Rules, the Exchange proposes to publish a Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time regardless of whether a security has not opened or is halted or paused at that time.

Proposed Rule 7.35B(d)(2) would specify the requirements for publication of a Manual Closing Imbalance. As proposed, beginning one hour before the scheduled end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time, a DMM may disseminate a Manual Closing Imbalance only with prior Floor Official approval and only a

DMM can update a Manual Closing Imbalance publication. This proposed rule text is based in part on current Rule 123C(1)(b) that an Informational Imbalance Publication can only be between 3:00 p.m. and 3:50 p.m., and on Rule 123C(5)(b), which provides that an Informational Imbalance Publication may be published between 3:00 and 3:50 p.m. with the prior approval of a Floor Official, with non-substantive differences to use Pillar terminology.[75]

Proposed Rule 7.35B(d)(2)(A) would provide that if a DMM disseminates a Manual Closing Imbalance before the Closing Auction Imbalance Freeze Time, such publication must be updated at the Closing Auction Imbalance Freeze Time with either: (i) A Regulatory Closing Imbalance, if the conditions specified in proposed Rule 7.35B(d)(1) are met; or (ii) a ''No Imbalance'' publication if the conditions specified in proposed Rule 7.35B(d)(1) are not met. This proposed rule text is based on Rule 123C(5)(b)(i) and (ii) with non-substantive differences to use Pillar terminology.

Auction Imbalance Information. Proposed Rule 7.35B(e) would specify Auction Imbalance Information for the Closing Auction. Proposed Rule 7.35B(e)(1) would specify the time of publication of such Auction Imbalance Information as follows:

- Proposed Rule 7.35B(e)(1)(A) would provide that for the Closing Auction, the Exchange would begin disseminating Auction Imbalance Information at the Closing Auction Imbalance Freeze Time even if such security is in a halt condition or has not yet opened. This proposed rule text is based in part on Rule 123C(1)(f), which defines the time when the Exchange begins publishing Order Imbalance Information, and Rule 123C(6)(a) with non-substantive differences to use Pillar terminology.
- Proposed Rule 7.35B(e)(1)(B) would provide that beginning two hours before the end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time, the Exchange would make available Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, and if published, Manual Closing Imbalance, to Floor brokers for any security (i) in which a Floor broker has entered an order or (ii) as specifically requested by a Floor broker and that this Auction Imbalance Information would be provided in a manner that does not permit electronic redistribution. The rule would further provide that beginning at the Closing Auction Imbalance Freeze Time, all Closing Auction Imbalance Information would be made available to Floor brokers. This proposed rule text is based on Rule 123C(6)(b) with non-substantive differences to use Pillar terminology.
- Proposed Rule 7.35B(e)(1)(C) would provide that the Exchange would not disseminate Auction Imbalance Information for the Closing Auction if there is no Exchange Last Sale Price. This proposed rule text would be new for the Pillar Auction Rules based on current functionality. Because, as described below, the Exchange would use the Exchange Last Sale Price as the basis for determining the Imbalance Reference Price, if there is no Exchange Last Sale Price, there would not be any information for the Exchange to determine Auction Imbalance Information.

Proposed Rule 7.35B(e)(2) would specify the content of Auction Imbalance Information. As proposed, the Closing Auction Imbalance Information would include Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, Continuous Book Clearing Price, Closing Interest Only Clearing Price, and Regulatory Closing Imbalance. This proposed rule text is based on Rule 123C(6)(a)(i), which describes the Order Imbalance Information disseminated under the Current Auction Rules, with non-substantive differences to use Pillar terminology. In addition, as described above, including Unpaired Quantity and Side of Unpaired Quantity would be new information included under the Pillar Auction Rules.

Proposed Rule 7.35A(e)(3) would specify how the Imbalance Reference Price for the Closing Auction would be determined. As proposed, the Imbalance Reference Price for the Auction Imbalance Information would be:

- The BB if the Exchange Last Sale Price is lower than the BB (see proposed Rule 7.35B(e)(3)(A)).
- The BO if the Exchange Last Sale Price is higher than the BO (see proposed Rule 7.35B(e)(3)(B)).
- The Exchange Last Sale Price if it is at or between the BBO or if the security was halted or not opened by the Closing Auction Imbalance Freeze Time (see proposed Rule 7.35B(e)(3)(C)).[76]

This proposed rule text is based on Rule 123C(6)(a)(iii) and subparagraphs (A)–(C) with non-substantive differences to use Pillar terminology and a substantive difference to use Exchange Last Sale Price rather than the last sale price of such security on the Exchange. If a security has traded that day on the Exchange, use of the term ''Exchange Last Sale Price'' would have the same meaning as the current rule. However, if there were no trades that day in a security on the Exchange and the prior day's Official Closing Price were based on a consolidated last-sale eligible trade from another exchange, then use of the term Exchange Last Sale Price would have a substantive difference from use of the term ''last sale price'' under current Rule 123C(6)(a)(iii). The Exchange believes that in such scenario, the term Exchange Last Sale Price may have a more recent valuation than use of the term last sale price on the Exchange.

Auction Imbalance Freeze. Proposed Rule 7.35B(f) would provide that the Auction Imbalance Freeze for the Closing Auction would begin at the Closing Auction Imbalance Freeze Time. This proposed rule text is based on Rules 123C(2), (3), (4), (5) and (6), which each reference the 3:50 p.m. time as the beginning of order entry and cancellation restrictions and when the Exchange will begin disseminating information about the close. The Exchange proposes non-substantive differences to use Pillar terminology.

Proposed Rule 7.35B(f) would further provide that order entry and cancellation would be processed during the Closing Auction Imbalance Freeze as follows:

- Entry of MOC and LOC Orders (proposed Rule 7.35B(f)(1)).
  - ○ Proposed Rule 7.35B(f)(1)(A) would provide that if a Regulatory Closing Imbalance has not been published, the Exchange would reject all MOC and LOC Orders and requests to cancel and replace MOC and LOC Orders that would result in a new MOC or LOC Order. This proposed rule text is based on Rule 123C(2)(b)(ii) with non-substantive differences to use Pillar terminology.
  - ○ Proposed Rule 7.35B(f)(1)(B) would provide that if a Regulatory Closing Imbalance has been published, the Exchange would accept MOC and LOC Orders opposite to the Side of the Regulatory Closing Imbalance and would reject MOC and LOC Orders on the Side of the Imbalance and requests to cancel and replace MOC and LOC

[75] Rule 123C(5)(b) also refers to a qualified ICE employee as defined in NYSE Rule 46.10. Rule 46(b)(v) provides that qualified ICE employees may be designated as a Floor Governor, and pursuant to Rule 46(b)(ii), a Floor Governor is also deemed to be a Floor Official. Accordingly, the Exchange believes that separately referencing qualified ICE employees would be redundant of simply referring to Floor Officials and therefore does not propose to reference qualified ICE employees as defined in NYSE Rule 46.10 in proposed Rule 7.35B(d)(2).

[76] The terms BB, BO, and BBO are defined in Rule 1.1 to mean the best bid on the Exchange, the best offer on the Exchange, and the best bid or offer on the Exchange, respectively.

Orders that would result in a new MOC or LOC Order on the Side of the Imbalance. This proposed rule text is based on Rule 123C(2)(b)(i) with non-substantive differences to use Pillar terminology.[77]

• Cancellation of MOC, LOC, and Closing IO Orders (see proposed Rule 7.35B(f)(2)).

○ Proposed Rule 7.35B(f)(2)(A) would provide that from the beginning of the Auction Imbalance Freeze Time until two minutes before the scheduled end of Core Trading Hours, MOC, LOC, and Closing IO Orders may be cancelled or reduced in size only to correct a Legitimate Error. This proposed rule text is based on Rule 123C(3)(b) with non-substantive differences to use Pillar terminology.[78]

○ Proposed Rule 7.35B(f)(2)(B) would provide that except as provided for in proposed Rule 7.35B(j)(2)(B) of this Rule, a request to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order entered two minutes or less before the scheduled end of Core Trading Hours would be rejected. This proposed rule text is based on Rule 123C(3)(c) with non-substantive differences to use Pillar terminology and update the rule cross-references.

• Proposed Rule 7.35B(f)(3) would provide that beginning 10 seconds before the scheduled close of trading, a request to enter a Closing D Order in any security, cancel and replace a Closing D Order in any security that would result in a new Closing D Order, or cancel, cancel and replace, or modify a Closing D Order in an Auction-Eligible Security would be rejected. The proposed rule text relating to restrictions on the entry of Closing D Orders in any security is based in part on the operation of d-Quotes for Exchange-listed securities described in the second sentence of current Rule 70.25(a)(ii), which prohibits the entry of d-Quotes 10 seconds or less before the close of trading. Similarly, the Exchange proposes that a request to cancel and replace a Closing D Order that would result in a new Closing D Order would similarly be rejected because it would result in the entry of a new Closing D Order. Because the Exchange would accept a Closing D Order in a UTP Security, even though such order would be routed to the primary market, as proposed, such orders would also be rejected if entered 10 seconds or less before the scheduled close of trading.

The Exchange further proposes that requests to cancel, cancel and replace, or modify Closing D Orders during this same period should also be rejected, which would be new functionality on Pillar. Because this is new functionality, it would be applicable only to Closing D Orders in Auction-Eligible Securities. The Exchange does not propose the same restriction for Closing D Orders in UTP Securities because such securities are routed to the applicable primary listing market as either a MOC or LOC Order, and would be processed by the primary listing market under its applicable rules.

• Proposed Rule 7.35B(f)(4) would provide that all other order instructions would be accepted, subject to the terms of such orders. This proposed rule text is based in part on NYSE Arca Rule 7.35–E(d)(2)(C) and NYSE American Rule 7.35E(d)(2)(C) and reflects the Pillar terminology to specify only restrictions on entry and cancellation of orders.

Determining an Auction Price. Proposed Rule 7.35B(g) would provide that the DMM would be responsible for determining the Auction Price for a Closing Auction under this Rule. This proposed rule text would be new for the Pillar Auction rules and is based on current functionality that as part of the DMM's role in facilitating auctions, the DMM determines the Auction Price based on buy and sell orders represented in the Exchange Book. The Exchange believes that including this detail in Exchange rules provides clarity and transparency to the Exchange's auction process.

The rule would further provide that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied. This proposed rule text is based in part on Rule 123C(8)(a)(i)(A), which specifies that Market Orders and Limit Orders better priced than the closing price trading against the imbalance amount are guaranteed to participate in the closing transaction.[79] Otherwise, this proposed rule text would be new for the Pillar Auction Rules, and is designed to promote clarity and transparency in Exchange rules relating to the Exchange's auction process.

Auction Allocation. Proposed Rule 7.35B(h) would specify how orders would be allocated in an Auction. As proposed, once an Auction Price has been determined, orders would be allocated in a Closing Auction as follows:

• Better-priced orders, including the reserve interest of Reserve Orders, entered by the Book Participant or a Floor Broker Participant would be guaranteed to participate in the Closing Auction at the Auction Price (see proposed Rule 7.35B(h)(1)). The Exchange proposes to use Pillar terminology in proposed Rule 7.35B(h)(1) to describe the same functionality as set forth in Rule 123C(7), which specifies the orders that must be executed in whole or in part in the closing transaction, i.e., are better-priced orders.

• At-priced orders and DMM Interest of any price would not be guaranteed to participate in the Closing Auction (see proposed Rule 7.35B(h)(2)). The Exchange proposes to use Pillar terminology in proposed Rule 7.35B(h)(2) to describe the functionality as set forth in Rule 123C(7)(b), including that DMM Interest is not guaranteed to participate in such Auctions. Proposed Rule 7.35B(h)(2) would further provide how at-priced orders would be allocated in an Auction as follows:

○ First, orders ranked Priority 2—Display Orders and Closing D Orders would be allocated on parity by Participant pursuant to Rule 7.37(b)(2)–(7) (see proposed Rule 7.35B(h)(2)(A)). By cross-referencing Rule 7.37(b)(2)–(7), this proposed rule text makes clear that the allocation process for the Closing Auction would follow the established Pillar parity allocation process. The Exchange believes that if at-priced Closing D Orders are participating in the Closing Auction at the Auction Price, such orders should be allocated together with displayed orders. In addition, by cross referencing Rules 7.37(b)(5), (6), and (7), the proposed Rule provides specificity that allocations to each Participant, including DMMs, would be allocated consistent with those rules.

○ Next, orders ranked Priority 3—Non-Display Orders would be allocated on parity by Participant pursuant to

[77] The Exchange does not propose rule text in the Pillar Auction Rules based on Rule 123C(2)(a), which describes MOC and LOC Order entry before 3:50 p.m., or 123C(2)(b)(3), which describes CO Order entry after 3:50 p.m. Under the Pillar Auction Rules, the Exchange proposes to describe only when order entry is restricted. The Exchange also does not propose rule text based on Rule 123C(2)(c), which describes order entry in the event of a Trading Halt. As described above, the Exchange would disseminate a Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time even if a security were halted or paused at that time. Accordingly, order entry of MOC and LOC Orders during such period would need to comply with proposed Rule 7.35B(f)(1)(A) and (B) regardless of whether a security is halted or paused.

[78] The Exchange does not propose rule text based on Rule 123C(3)(a), which provides that MOC, LOC and CO orders may be cancelled or reduced in size for any reason up to 3:50 p.m. Under the Pillar Auction Rules, the Exchange proposes to describe only when order cancellation would be restricted.

[79] In the Pillar Auction Rules, a Market Order that is held unexecuted pursuant to Rule 7.31(a)(1)(A) would be considered better-priced interest when it is included for allocation in an Auction.

Rule 7.37(b)(2)–(7) (see proposed Rule 7.35B(h)(2)(B)). This proposed rule text would be applicable to the reserve interest of Reserve Orders, which are the only orders ranked Priority 3—Non-Display Orders eligible to participate in an Auction. By cross-referencing Rule 7.37(b)(2)–(7), this proposed rule text makes clear that the allocation process for the Closing Auction would follow the established Pillar parity allocation process.

○ Next, LOC Orders would be allocated on time (see proposed Rule 7.35B(h)(2)(C)). This proposed allocation would be new under the Pillar Auction Rules. Unlike LOO Orders, which are displayed at their limit price prior to the Core Open or Trading Halt Auction, LOC Orders are not displayed at their limit price. LOC Orders are included in the aggregate in Auction Imbalance Information only to determine the Imbalance. Because they are not displayed, the Exchange does not believe that they should be ranked together with orders ranked Priority 2—Display Orders. The Exchange further believes that orders ranked Priority 3—Non-Displayed Orders should have priority over LOC Orders because such orders were eligible to trade before the Closing Auction, and therefore were at risk of trading before the Auction.

○ Next, Closing IO Orders opposite to the Side of the Unpaired Quantity would be allocated on time (see proposed Rule 7.35B(h)(2)(D)). This proposed rule text is based on Rule 13(c)(1), which describes how CO Orders are allocated. The Exchange proposes non-substantive differences to use Pillar terminology to describe the same functionality. Proposed Rule 7.35B(h)(2)(D)(i) would further provide that Closing IO Orders would not participate in the Closing Auction if there is no Unpaired Quantity at the Auction Price. This proposed rule text is similarly based on Rule 13(c)(1), but with non-substantive differences to use Pillar terminology.

• Proposed Rule 7.35B(h)(3) would address the DMM Participant Allocation of at-priced orders in the Closing Auction, which would be all of the DMM Participant's orders, regardless of limit price. The Exchange proposes that the manner by which DMMs would participate in an Auction would differ from how they participate in allocations during continuous trading, described above. As proposed:

○ At-priced DMM Orders would be placed on the allocation wheel for the Closing Auction based on the time of entry and any other orders or interest from such DMM would join that position on the allocation wheel (see proposed Rule 7.35B(h)(3)(A)). In such case, the DMM Order with the earliest entry time would establish that DMM Participant's position on the allocation wheel, consistent with Rule 7.37(b)(2)(B).[80] However, if the only DMM Interest available to participate in a Closing Auction would be DMM Auction Liquidity or better-priced DMM Orders or both, such DMM Interest would be placed last on the allocation wheel. Similar to proposed Rule 7.35A(h)(3)(A) regarding allocation of DMM Interest in the Core Open or Trading Halt Auction, the Exchange proposes that in these scenarios, the DMM Interest would go last on the allocation wheel because such orders would either be repriced for the Auction (in the case of a better-priced DMM Order, which would be considered an at-priced order for the Auction Allocation) or entered right before the Auction (in the case of DMM Auction Liquidity). Because such DMM Interest is intended to be offsetting interest for an Auction, the Exchange does not believe that such DMM Interest should have time priority in how they are included in an allocation wheel over other orders that are eligible to participate in an Auction. This proposed functionality would be new on Pillar and is designed so that DMMs, who have the ability to enter buy and sell interest last in an Auction, would not receive any time priority for such interest.

○ A parity allocation to the DMM Participant would be allocated in price-time priority (see proposed Rule 7.35B(h)(3)(B)). As discussed above, a parity allocation to the DMM Participant would be based on the working time. However, in an Auction Allocation, DMM Interest may have more than one limit price, and the Exchange proposes that the parity allocation to the DMM Participant would be allocated among such DMM Interest in price-time priority, even though they all would participate in the Auction at a single price.

SIP Modifier. Proposed Rule 7.35B(i) would provide that the Closing Auction would be designated with a modifier to identify it as a Closing Auction Trade and that the Exchange would report an Official Closing Price, as defined in Rule 1.1, for all Auction-Eligible Securities that trade on the Exchange, provided that an Official Closing Price would not be reported for a security if there was no Exchange Last Sale Price in such security on a trading day. These SIP modifiers are consistent with how the Exchange functions under the Current Auction Rules and would be new rule text for the Pillar Auction Rules that is based on NYSE Arca Rule 7.35E(d)(4) and NYSE American Rule 7.35E(d)(4).

Temporary Rule Suspensions. Current Rule 123C(9) provides that in order to address extreme order imbalances at or near the close, the Exchange can temporarily suspend either the hours of the Exchange or the prohibition on cancelling or reducing in size MOC, LOC, or CO Orders after 3:58 p.m. In the Pillar Auction Rules, the Exchange proposes to move these two temporary rule suspension requirements to proposed Rule 7.35B(j). The Exchange also proposes a new temporary rule suspension for the close that is based on the current Rule 123D(c) temporary rule suspension for the open or reopen.

Proposed Rule 7.35B(j)(1) would set forth the temporary suspension of DMM automated closing limitations, which would be new under the Pillar Auction Rules. As described above, pursuant to proposed Rule 7.35B(c)(1)(G), the Exchange proposes to specify designated percentages for when a DMM may not close a security electronically. Because this proposed rule text is based in part on Rule 123D(a), the Exchange similarly proposes a temporary suspension of these automated limitations for the close similar to the temporary suspension of automated limitations for the open or reopen as set forth in Rule 123D(c).

Proposed Rule 7.35B(j)(1)(A) would provide that if the CEO of the Exchange, or his or her designee, determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Closing Auction and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the prohibition on a DMM closing a security electronically if the Closing Auction Price would be more than the price or volume parameters specified in proposed Rule 7.35B(c)(1)(F) and (G). This proposed rule text is based on Rule 123D(c)(1)(A) with modifications to apply it to the Closing Auction.

Proposed Rule 7.35B(j)(1)(B) would provide that in determining whether to temporarily suspend proposed Rule 7.35B(c)(1)(F) or (G), the CEO of the Exchange would:

• Consider the facts and circumstances that are likely to have Floor-wide impact for a particular trading session, including volatility in the day's trading session, trading in foreign markets, substantial activity in

[80] Rule 7.37(b)(2)(B) provides that additional Participants are added to an allocation wheel based on time of entry of the first order entered by a Participant.

the futures market, evidence of pre-closing significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions (see proposed Rule 7.35B(j)(1)(B)(i)). This proposed rule text is based on Rule 123D(c)(2)(A) with modifications to apply it to the Closing Auction.

• Notify the Chief Regulatory Officer of the Exchange (see proposed Rule 7.35B(j)(1)(B)(ii)). This proposed rule text is based on Rule 123D(c)(2)(B) with modifications to apply it to the Closing Auction.

• Inform the Securities and Exchange Commission staff as promptly as practicable of the temporary suspension (see proposed Rule 7.35B(j)(1)(B)(iii)). This proposed rule text is based on Rule 123D(c)(2)(C) with modifications to apply it to the Closing Auction.

Proposed Rule 7.35B(j)(1)(C) would provide that a temporary suspension under this Rule will be in effect for the trading day on which it was declared only. This proposed rule text is based on Rule 123D(c)(3) with modifications to apply it to the Closing Auction.

Proposed Rule 7.35B(j)(2) would set forth in the Pillar Auction Rules the temporary suspensions currently available under Rule 123C(9)(a), with non-substantive differences to use Pillar terminology. As proposed, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend one of two rules.

First, pursuant to proposed Rule 7.35B(j)(2)(A), the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours (Rule 7.34(a)(2)(B)) [81] to permit the solicitation and entry of orders into Exchange systems. This proposed rule text is based on Rule 123C(9)(a)(1) as follows:

• Such orders would be solicited solely to offset any Imbalance in a security that may exist as of the scheduled end of Core Trading Hours (see proposed Rule 7.35B(j)(2)(A)(i)). This proposed rule text is based on Rule 123C(9)(a)(1)(i) with non-substantive differences to use Pillar terminology. Specifically, Rule 123C(9)(a)(1)(i) refers to offsetting ''any imbalance'' in a security. Because, as described above, the term ''Imbalance'' for the Closing Auction refers to the imbalance of Auction-Only Orders, to ensure that the Imbalance used for entry of orders during this proposed temporary suspension would reflect all orders eligible to trade in the Closing Auction, the Exchange proposes to specify that for purposes of proposed Rule 7.35B(j)(2)(A), the Imbalance would include all interest eligible to participate in the Closing Auction. This proposed rule text makes clear that if this temporary rule suspension were triggered, the Imbalance included in the Auction Imbalance Information, which would continue to be calculated until the Closing Auction begins, would begin to include all orders eligible to trade in the Closing Auction.

• The Exchange would disseminate a notice via its proprietary data feed and such other methods of communication, as determined by the Exchange, that notifies both on-Floor and off-Floor participants that the Exchange would be accepting offsetting orders after the end of Core Trading Hours up to an order acceptance cut-off time designated by the Exchange (the ''Solicitation Period'') (see proposed Rule 7.35B(j)(2)(A)(ii)). This proposed rule text is based on Rule 123C(9)(a)(1)(ii) with a substantive difference to specify that the solicitation would be disseminated both on the Exchange's proprietary data feed, which would be new under Pillar Auction Rules, and such other methods of communication. For example, the Exchange currently notifies member organizations of such solicitations via Trader Update. The Exchange proposes to continue using Trader Updates and believes that also including this information in its proprietary data feed will enable automated systems of Exchange member organizations to be able to respond on a more timely basis to such solicitation requests. The Exchange also proposes non-substantive differences to use Pillar terminology, including a new defined term of ''Solicitation Period.''

The proposed rule would further provide that such notification would include, at a minimum: (A) The security symbol; (B) the Total Imbalance; (C) the Side of the Total Imbalance; and (D) the Exchange Last Sale Price. This proposed rule text is also based on Rule 123C(9)(a)(1)(ii) and uses Pillar terminology to describe the information that would be included in the solicitation request.

• If the Side of the Imbalance is buy (sell), during the Solicitation Period, the Exchange will accept only sell (buy) Limit Orders and Floor Broker Interest with a limit price equal to or higher (lower) than the Exchange Last Sale Price. Such orders would not be subject to the Limit Order Price Check and would not be routed to an Away Market (see proposed Rule 7.35B(j)(2)(A)(iii)). This proposed rule text is based on Rule 123C(9)(a)(1)(iii) with non-substantive differences to use Pillar terminology. The Exchange proposes new functionality under the Pillar Auction Rules. First, because Limit Orders are subject to Limit Order Price Protection, the Exchange proposes to specify that Limit Orders entered in response to a Solicitation Request would not be subject to such price check. Because such orders are by their terms, restricted in the limit price applicable to such orders, the Exchange does not believe that Limit Order Price Protection would be necessary for such orders.

Second, the Exchange proposes to systemically enforce these order entry requirements. Currently, while Rule 123C(9)(a)(1)(iii) requires only specified interest to be entered, Exchange systems do not enforce this requirement. Under the Pillar Auction Rules, the Exchange proposes to enforce these requirements by rejecting orders outside of these specified parameters. To specify this new functionality, proposed Rule 7.35B(j)(2)(A)(iii) would further provide that the Exchange would reject all other orders and requests to cancel any orders, regardless of the time of entry of the original order. For example, if an order was represented before the end of Core Trading Hours, the Exchange would not accept a cancellation of such previously-entered order during the Solicitation Period. Finally, because Auction Imbalance Information would continue to be published up to the beginning of the Auction Processing Period for the Closing Auction, the Exchange further proposes to provide that orders entered during the Solicitation Period would be included in the calculation of the Continuous Book Clearing Price.

• The DMM would close the security the earlier of the order acceptance cut-off time or if the Imbalance is paired off at or reasonably contiguous to the Exchange Last Sale Price (see proposed Rule 7.35B(j)(2)(A)(iv)). This proposed rule would further provide that for purposes of proposed Rule 7.35B(j)(2)(A), a price reasonably contiguous to the Exchange Last Sale Price is within cents of the Exchange Last Sale Price and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to

[81] *See* discussion *infra* regarding proposed Rule 7.34(a)(2)(B), which is based on Rule 52. Currently, Rule 123C(9)(a)(1) permits a temporary suspension of the hours of operation, as described in Rule 52. The Exchange believes that proposed Rule 7.35B(j)(2)(A) achieves the same result using Pillar terminology to describe the temporary rule suspension.

the Exchange Last Sale Price and that all offsetting interest solicited pursuant to proposed Rule 7.35B(j)(2)(A) would be executed consistent with proposed Rule 7.35B(h). This proposed rule text is based on Rule 123C(9)(a)(1)(iv) with non-substantive differences to use Pillar terminology and update the rule cross references.

• Finally, if the Exchange solicits orders after the close of Core Trading Hours pursuant to proposed Rule 7.35B(j)(2)(A), the Total Imbalance information that would be disseminated pursuant to proposed Rule 7.35B(e) would begin including all orders eligible to participate in the Closing Auction. This proposed rule text would be new for the Pillar Auction Rules and reflects that not only would the Imbalance be calculated based on all orders eligible to trade in the Closing Auction, but the Total Imbalance published during this period would also be based on all orders eligible to participate in the Closing Auction.

Second, pursuant to proposed Rule 7.35B(j)(2)(B), the Exchange may temporarily suspend the prohibition on canceling an MOC or LOC Order after two minutes before the scheduled end of Core Trading Hours (proposed Rule 7.35B(f)(2)(B)). This proposed rule text is based on Rule 123C(9)(a)(2) with one substantive difference that in Pillar, the Exchange would not support being able to reduce the size of a MOC or LOC Order if this temporary suspension were invoked. Instead, as proposed, if this temporary suspension were invoked, the Exchange would be able to fully cancel a MOC or LOC Order only. Based on the Current Auction Rules, the Exchange proposes certain qualifications for such temporary suspension, provided that:

• The cancellation is necessary to correct a Legitimate Error (see proposed Rule 7.35B(j)(2)(B)(i)). This proposed rule text is based on Rule 123C(9)(2)(A) with non-substantive differences to use Pillar terminology.

• Execution of such an MOC or LOC Order would cause significant price dislocation at the close (see proposed Rule 7.35B(j)(2)(B)(ii)). This proposed rule text is based on Rule 123C(9)(2)(B) with non-substantive differences to use Pillar terminology.

Proposed Rule 7.35B(j)(3) would provide that only the DMM assigned to a particular security may request a temporary suspension under proposed Rule 7.35B(j)(2) and that a determination to declare such a temporary suspension may be made after the scheduled end of Core Trading Hours and would be made on a security-by-security basis. This proposed rule text is based on Rule 123C(9)(b) with non-substantive differences to use Pillar terminology. Proposed Rule 7.35B(j)(3) would further provide that such determination, as well as any entry or cancellation of orders or closing of a security under proposed Rule 7.35B(j)(2) must be supervised and approved by an Executive Floor Governor and supervised by an Exchange Officer and that factors that may be considered when making such a determination include, but would not be limited to, when the order(s) that impacted the Imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation. This proposed rule text is also based on Rule 123C(9)(b) with non-substantive differences to use Pillar terminology.[82]

Finally, proposed Rule 7.35B(j)(4) would provide that a temporary suspension under proposed Rule 7.35B(j)(2) would be in effect only for the particular security for which such suspension has been granted and for that trading day. This proposed rule text is based on Rule 123C(9)(c) with non-substantive differences to update the rule cross references.

Proposed Rule 7.35C (Exchange-Facilitated Auctions)

As discussed above, DMMs have an obligation to facilitate Auctions and therefore both the Current Auction Rules and proposed Pillar Auction Rules, described above, contemplate that the DMM will facilitate Auctions. The Current Auction Rules also provide for how the Exchange would facilitate an Auction if a DMM cannot facilitate the opening or closing of trading. In such circumstances, Rule 123D(a)(2)–(6) sets forth how the Exchange would facilitate the opening or reopening of securities and Supplementary Material .10 to Rule 123C sets forth how the Exchange would facilitate the closing of securities.[83]

When Exchange-listed securities transition to Pillar, the Exchange proposes that new Rule 7.35C (Exchange-Facilitated Auctions) would describe how the Exchange would facilitate an Auction in one or more securities if the DMM cannot. Similar to how the Current Auction Rules function, because the Exchange would not supply any liquidity when facilitating an Auction, under proposed Rule 7.35C, the Exchange would not open, reopen, or close a security at a price outside of defined numerical parameters. In addition, similar to the Current Auction Rules, orders that would have otherwise participated in an Auction under Rule 7.35A, but which may not participate in an Exchange-facilitated Auction because of such numerical parameters, will be cancelled.

While the basic premise of how Exchange-facilitated Auctions on Pillar would not change, with the availability of Pillar technology, the Exchange proposes enhancements to this process that are based on how NYSE Arca and NYSE American operate electronic auctions, including using an Indicative Match Price to determine how to price the Auction, use of Auction Collars, and extension logic for reopenings following a trading pause.

Proposed Rule 7.35C(a) would provide that if a DMM cannot facilitate an Auction for one or more securities in which the DMM is registered under proposed Rules 7.35A or 7.35B, the Exchange would conduct the Auction for such security or securities electronically as provided for in proposed Rule 7.35C. This proposed rule text is based in part on the first sentence of Rule 123D(a)(2) and the first sentence of the second paragraph of Supplementary Material .10 to Rule 123C. The Exchange proposes non-substantive differences to use Pillar technology and cross reference Pillar Auction Rules.

Proposed Rule 7.35C(a)(1) would provide that before the Exchange facilitates an Auction, previously-entered DMM Interest would be cancelled, the Exchange would not accept new DMM Interest, and Floor Broker Interest that has not been electronically accepted by the DMM would not participate in an Exchange-facilitated Closing Auction. This proposed rule text is based in part on the second sentence of Rule 123D(a)(2) and the second sentence of the second paragraph of Supplementary Material .10 to Rule 123, which each provide that

[82] The Exchange also proposes a non-substantive difference to reference only the term ''Exchange Floor Governor,'' and not reference qualified ICE employees, as such text is redundant. *See* discussion *supra* note 75. In addition, because the Exchange no longer has Rule 48, the Exchange proposes to simply reference an Exchange Officer, which is a term used in other Exchange rules, such as Rule 7.10.

[83] *See* Securities Exchange Act Release No. 76290 (October 28, 2015), 80 FR 67822 (November 3, 2015) (SR–NYSE–2015–49) (Notice of filing and immediate effectiveness of proposed rule change to Rule 123D) and Securities Exchange Act Release No. 74006 (January 6, 2015), 80 FR 1567 (January, 12, 2015) (SR–NYSE–2014–73) (Notice of filing and immediate effectiveness of proposed rule change to Rule 123C). The Exchange has never facilitated either an opening or closing of any security on the Exchange.

''[m]anually-entered Floor interest will not participate in any [opening/closing] effectuated electronically by the Exchange and if previously entered, will be ignored.'' The Exchange proposes non-substantive differences to use Pillar terminology. The Exchange also proposes a substantive difference that all DMM Interest would be cancelled—not just DMM Interest entered on the Trading Floor by a DMM. In addition, to reflect the new Floor Broker Interest functionality, described above in proposed Rule 7.35B(a)(1), the Exchange proposes that if a DMM has already accepted such interest, and then the Exchange facilitates a Closing Auction, such interest would be eligible to participate in that Closing Auction. However, if the DMM has not accepted such interest, and therefore that interest has not yet been validated, it would not be eligible to participate in an Exchange-facilitated Closing Auction.

Proposed Rule 7.35C(a)(2) would provide that a security subject to an Exchange-facilitated Core Open Auction, IPO Auction, Direct Listing Auction, or Trading Halt Auction may open or reopen with a trade or a quote. This proposed rule text is based in part on Rule 123D(a)(3) and (a)(4), which describe how an opening or reopening can be on a trade or a quote.

Proposed Rule 7.35C(b) would set forth definitions that would be used for purposes of proposed Rule 7.35C only. Proposed Rule 7.35C(b)(1) would define the term ''Auction Reference Price,'' which is a term defined in NYSE Arca Rule 7.35–E(a)(8)(A) and NYSE American Rule 7.35E(a)(8)(A). As described below, the Auction Reference Price would be used by the Exchange, and is used by NYSE Arca and NYSE American, for purposes of calculating the Indicative Match Price and Auction Collars.

The Exchange proposes a difference from NYSE Arca and NYSE American because the Auction Reference Price that would be used for a particular Auction would be based on the Imbalance Reference Price, described above, for such Auctions. As proposed, the Auction Reference Price for the Core Open Auction would be the Imbalance Reference Price as determined under proposed Rule 7.35A(e)(3), described above. And, except as provided for in proposed Rule 7.35C(e), described below, the Auction Reference Price for a Trading Halt Auction would also be the Imbalance Reference Price as determined under proposed Rule 7.35A(e)(3), described above. The proposed Auction Reference Price for the Closing Auction would be the Imbalance Reference Price as determined under proposed Rule 7.35B(e)(3).

Finally, because the Exchange proposes to have functionality available to facilitate an IPO or Direct Listing Auction, the Exchange proposes that the Auction Reference Price for such Auctions would be a price determined under proposed Rule 1.1(s)(1)(F). Pursuant to that rule, the Exchange determines the Official Closing Price for a security that is a new listing and does not have any consolidated last-sale eligible trades on its first trading day based on a derived last sale associated with the price of such security before it begins trading on the Exchange. As noted above, pursuant to Rule 123C(1)(e)(i)(C), the Exchange already determines the Official Closing Price in this manner for new listings. As proposed, this price would be used as the Auction Reference Price if the Exchange were to facilitate an IPO or Direct Listing Auction.

Proposed Rule 7.35C(b)(2) would define the term ''Indicative Match Price'' to mean the best price at which the maximum volume of shares, including the non-displayed quantity of Reserve Orders, would be tradable in the applicable Auction, subject to the Auction Collars. This proposed definition is based on NYSE Arca Rule 7.35–E(a)(8) and NYSE American Rule 7.35E(a)(8) without any differences. With the exception of which Auction Reference Price would be used by the Exchange when it facilitates an Auction, the manner by which the Exchange would determine the Indicative Match Price would be based on NYSE Arca and NYSE American rules without any differences, as follows:

- Proposed Rule 7.35C(b)(2)(A) would provide that if there are two or more prices at which the maximum volume of shares would be tradable, the Indicative Match Price would be the price closest to the Auction Reference Price, provided that the Indicative Match Price would not be lower (higher) than the price of an order to buy (sell) ranked Priority 2—Display Orders that was eligible to participate in the applicable Auction. This proposed rule is based on NYSE Arca Rule 7.35–E(a)(8)(A) and NYSE American Rule 7.35E(a)(8)(A) without any differences.
- Proposed Rule 7.35C(b)(2)(B) would provide that if there are two prices at which the maximum volume of shares would be tradable and both prices are equidistant to the Auction Reference Price, the Indicative Match Price would be the Auction Reference Price. This proposed rule is based on NYSE Arca Rule 7.35–E(a)(8)(B) and NYSE American Rule 7.35E(a)(8)(B) without any differences.
- Proposed Rule 7.35C(b)(2)(C) would provide that if the Paired Quantity for an auction consists of buy and sell Market Orders only, the Indicative Match Price would be the Auction Reference Price. This proposed rule is based on NYSE Arca Rule 7.35–E(a)(8)(C) and NYSE American Rule 7.35E(a)(8)(C) with a difference that the Auction Reference Price would be used for all Auctions, whereas the NYSE Arca and NYSE American rules use a different reference price for the Closing Auction.
- Proposed Rule 7.35C(b)(2)(D) would provide that if there is a BBO, but no Paired Quantity, the Indicative Match Price for the Auction Imbalance Information would be (i) the side of the BBO that has the higher volume, or (ii) if the volume of the BB equals the volume of the BO, the BB. This proposed rule text is based on NYSE Arca Rule 7.35–E(a)(8)(D) and NYSE American Rule 7.35E(a)(8)(D) with a non-substantive difference to use the term ''Paired Quantity,'' which is defined in proposed Rule 7.35(a) above, instead of the term ''Matched Volume,'' which is a defined term on NYSE Arca and NYSE American that has the same meaning as the term ''Paired Quantity.''
- Proposed Rule 7.35C(b)(2)(E) would provide that if there is no Paired Quantity and Market Orders on only one side of the market, the Indicative Match Price for the Auction Imbalance Information would be zero. This proposed rule text is based on NYSE Arca Rule 7.35–E(a)(8)(E) and NYSE American Rule 7.35E(a)(8)(E) with a non-substantive difference to use the term ''Paired Quantity'' instead of the term ''Matched Volume.''
- Proposed Rule 7.35C(b)(2)(F) would provide that if the Indicative Match Price is not in the MPV for the security, it would be rounded to the nearest price at the applicable MPV. This proposed rule text is based on NYSE American Rule 7.35E(a)(8)(F) with a non-substantive difference not to include rule text referring to an Indicative Match Price based on the midpoint of the ''Auction NBBO,'' as this is a feature that the Exchange does not propose to include in Rule 7.35C.

Proposed Rule 7.35C(b)(3) would define the term ''Auction Collar'' to mean the price collar thresholds for the Indicative Match Price for an Auction. This proposed rule text is based on NYSE Arca Rule 7.35–E(a)(10) and NYSE American Rule 7.35E(a)(10) without any substantive differences. The Exchange further proposes that there would be no Auction Collars for

an IPO Auction or Direct Listing Auction. This proposed rule text is based in part on NYSE Arca Rule 7.35–E(f)(2) and NYSE American Rule 7.35E(f)(2), which provide than an IPO Auction on those exchanges would not be subject to Auction Collars. Because the Exchange proposes to process Direct Listing Auctions similarly to an IPO Auction, the Exchange proposes that if it facilitates a Direct Listing Auction, it would similarly not be subject to Auction Collars.

Proposed Rule 7.35C(b)(3)(A) would provide that the upper (lower) boundary of the Auction Collar would the Auction Reference Price increased (decreased) by either a specified amount or specified percentage, as applicable, rounded to the nearest MPV, provided that the lowest Auction Collar would be one MPV above $0.00. This proposed method of calculating the Auction Collar is identical to how NYSE Arca and NYSE American calculate an Auction Collar.[84]

- Proposed Rule 7.35C(b)(3)(A)(i) would provide that except as provided for in proposed Rule 7.35C(e)(4), described below, the Auction Collar for the Core Open Auction and the Closing Auction will be based on a price that is the greater of $0.15 or 10% away from the Auction Reference Price for the applicable Auction. This proposed Auction Collar is based in part on NYSE American Rule 7.35E(a)(10)(A), which also uses an Auction Collar for its Core Open Auction and Closing Auction that is $0.50 or 10% away from the Auction Reference Price. The Exchange proposes a substantive difference to use $0.15 as the breakpoint rather than $0.50. The Exchange believes this would simplify the operation of this functionality as it would use the same breakpoint as the proposed specified price for Auction Collars for Trading Halt Auctions.
- Proposed Rule 7.35C(b)(3)(A)(ii) would provide that except as provided for in proposed Rule 7.35C(e), described below, the Auction Collar for the Trading Halt Auction would be based on a price that is the greater of $0.15 or 5% away from the Auction Reference Price for the Trading Halt Auction. This proposed rule is based on NYSE Arca Rule 7.35–E(e)(7) and NYSE American Rule 7.35E(e)(7), which also has a price collar threshold of the greater of $0.15 or 5% away from the Auction Reference price.[85]

Proposed Rule 7.35C(b)(3)(B) would provide that an Indicative Match Price that is higher (lower) than the upper (lower) boundary of the Auction Collar would be adjusted to the upper (lower) boundary of the Auction Collar and orders eligible to participate in the applicable auction would trade at the collared Indicative Match Price. This proposed rule text is based on NYSE Arca Rule 7.35–E(a)(10)(B) and NYSE American Rule 7.35E(a)(10)(B) without any differences.

Proposed Rule 7.35C(c) would describe Auction Imbalance Information for Exchange-facilitated Auctions. As proposed, if it is determined that the Exchange will facilitate an Auction:

- The Exchange would disseminate Auction Imbalance Information as provided for in proposed Rule 7.35A(e) for an Exchange-facilitated Core Open, IPO, Direct Listing, or Trading Halt Auction (see proposed Rule 7.35C(c)(1)). Proposed Rule 7.35C(c)(1)(A) would further provide that a pre-opening indication, as described in proposed Rule 7.35A(d), would not be required for an Exchange-facilitated Auction. This proposed rule text is based in part on Rule 123D(a)(5), which provides that when the Exchange facilitates the opening or reopening of a security, it will publish Order Imbalance Information described in Rule 15(g), but will not issue pre-opening indications pursuant to Rule 15(a). Rule 123D(a)(5) further provides that the Exchange will publish a pre-opening indication pursuant to Rule 15(a) for a re-opening following a regulatory halt. However, as described above, on Pillar, the Exchange would never publish a pre-opening indication, and therefore, the Exchange proposes a difference on Pillar that when facilitating a reopening following a regulatory halt, the Exchange would not publish a pre-opening indication.

This proposed rule text also makes it explicit that if the Exchange facilitates an IPO or Direct Listing Auction, the Exchange would publish Auction Imbalance Information. As described above, the Exchange would not publish Auction Imbalance Information when a DMM facilitates such an Auction. The Exchange believes it is appropriate to disseminate Auction Imbalance Information if the Exchange facilitates such an Auction because there would be no Floor-based trading relating to that security.

- The Exchange would disseminate Closing Imbalance and Auction Imbalance Information as provided for in proposed Rules 7.35B(d) and (e) for an Exchange-facilitated Closing Auction (see proposed Rule 7.35C(c)(2)). Proposed Rule 7.35C(c)(2)(A) would further provide that entry and cancellation of orders for the Closing Auction would be subject to the Auction Imbalance Freeze as provided for in proposed Rule 7.35B(f), described above. This proposed rule text is based on Rule 123C generally because if the Exchange were to facilitate a closing transaction pursuant to Supplementary Material .10 to Rule 123C, there is nothing in that rule that suspends the requirements specified in Rule 123C(1)–(6) for such scenario.[86]
- The Auction Imbalance Information would begin including the Indicative Match Price, the Auction Collars, and, for a Trading Halt Auction pursuant to proposed Rule 7.35C(e), described below, an indicator of whether an Auction could be conducted, based on the applicable Auction Collar, and the number of extensions (see proposed Rule 7.35C(c)(3)). This proposed rule text would be new and is based on the information included in the Auction Imbalance Information disseminated by NYSE Arca and NYSE American.[87] The Exchange believes that if it facilitates an Auction, including this information in the Auction Imbalance Information would promote transparency regarding the price at which such Auction could or could not occur.

Proposed Rule 7.35C(d) would describe the DMM's role in an Exchange-facilitated Auction. A DMM may be unable to facilitate an Auction for a myriad of reasons, ranging from the unavailability of the Trading Floor to a technology issue with a single DMM's graphical user interface on the Trading Floor. Because in these scenarios, it could be feasible for the DMM to facilitate an Auction electronically (which does not require a Floor presence), the Exchange proposes that before the Exchange facilitates an Auction, if feasible, the DMM should first be provided an opportunity to facilitate an Auction electronically.[88]

[84] *See* NYSE Arca Rule 7.35–E(a)(10)(A) (third sentence) and NYSE American Rule 7.35E(a)(10)(A) (third sentence).

[85] In the NYSE Arca and NYSE American rules, this specified amount is described as ''[f]or securities with an Auction Reference Price above $3.00, the Price Collar Threshold for Auction Collars will be the Auction Reference Price multiplied by 5 percent. For securities with an Auction Reference Price $3.00 and below, the Price Collar Threshold for Auction Collars will be $0.15.'' Mathematically, using the phrase ''the greater of $0.15 or 5%'' leads to the same result. Therefore, even though the Exchange proposes to use different text, it is substantively the same as the Auction Collar on NYSE Arca and NYSE American.

[86] For example, Rule 123C.10(b) specifies that the provisions of Rules 123C(9)(a)(1) and 123C(9)(b) would be suspended if the Exchange facilitates the closing transaction. The absence of a reference that Rules 123C(1)–(6) would not be suspended means that those rules would still be applicable.

[87] *See* NYSE Arca Rule 7.35–E(a)(4) and NYSE American Rule 7.35E(a)(4).

[88] For example, if a security is not open by 9:30 a.m. and then it is determined that the Exchange

Proposed Rule 7.35C(d) would provide that before facilitating an Auction under this Rule, the Exchange may provide the DMM with the opportunity to electronically facilitate an Auction pursuant to Rules 7.35A or 7.35B. Providing the DMM with an opportunity to facilitate an Auction pursuant to Rule 7.35A and 7.35B would allow for the DMM to supply liquidity as needed pursuant to Rule 104(a)(2) or (3) so that all better-priced orders on the Side of the Imbalance could be satisfied at a price at or within the Auction Collars. However, the Exchange recognizes that there would need to be differences if a DMM were to electronically facilitate an Auction in such circumstances.

• Proposed Rule 7.35C(d)(1) would provide that the limitations on a DMM facilitating an Auction electronically specified in Rules 7.35A(c)(1)(E) (reopening following a regulatory halt), 7.35A(c)(1)(G) and (H) (price and paired volume limitations for the Core Open and Trading Halt Auctions), and 7.35B(c)(1)(G) and (H) (price and paired volume limitations for the Closing Auction) would not be applicable. With these proposed exceptions, a DMM would be able to facilitate a Trading Halt Auction following a regulatory halt electronically, which would otherwise not be permitted (under normal operating conditions, the Exchange expects the DMM to facilitate such Auction manually). In addition, the Exchange would no longer require the paired volume and price limitations for such Auctions.

• Proposed Rule 7.35C(d)(2) would provide that a pre-opening indication pursuant to Rule 7.35A(d) would not be required. Because a pre-opening indication is published by a DMM on the Trading Floor, a DMM that is facilitating an Auction electronically would not be able to publish such indication. Accordingly, the Exchange proposes it would not be applicable in such circumstances.

• Proposed Rule 7.35C(d)(3) would provide that if the DMM does not select an Auction Price consistent with Rule 7.35A(g) or 7.35B(g) that is at or within the specified Auction Collar, the Exchange would facilitate the Auction pursuant to this Rule. As noted above, DMMs would not be subject to the price limitations specified in Rules 7.35A(c)(1)(G) or 7.35B(c)(1)(G). However, the Exchange also believes that in such circumstances, the price of such an Auction should be bound by the Auction Collars, described above. Accordingly, the DMM would need to select an Auction Price that is at or within the Auction Collars. If the DMM does not select such an Auction Price, the Exchange would proceed with facilitating the Auction. If the Exchange were to facilitate an Auction, as described below, this would allow for a process to cancel specified orders that were not included in such an Auction.

Proposed Rule 7.35C(e) would set forth the extension logic for a Trading Halt Auction following a trading pause, which the Exchange would define as an ''LULD Auction.'' As noted above, the Exchange proposes to apply extension logic that is currently available on NYSE Arca and NYSE American for all Trading Halt Auctions to LULD Auctions only. The Exchange believes that making such extension logic available to LULD Auctions only would be consistent with the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'') while at the same time streamlining the operation of Exchange-facilitated Auctions, which are not the primary method of conducting Auctions at the Exchange.[89]

As proposed, the Exchange would attempt to facilitate an LULD Auction following a trading pause under Rule 7.11 (''Trading Pause'') at the scheduled end of the Trading Pause, which would be defined as the initial ''Reopening Time.'' This proposed rule text is based in part on NYSE Arca Rule 7.35–E(e)(2) and NYSE American Rule 7.35E(e)(2), which describe when the initial Reopening Time would be for a Trading Pause under those rules, with a non-substantive difference to use the term ''Reopening'' instead of the term ''Re-Opening.''

Proposed Rule 7.35C(e)(1) would provide that an LULD Auction would not be conducted if, at the Reopening Time, the Indicative Match Price, before being adjusted based on Auction Collars, is below (above) the Lower (Upper) Auction Collar or if there is an Imbalance of sell (buy) Market Orders (either, an ''Impermissible Price''). This proposed rule text is based in part on NYSE Arca Rule 7.35–E(e)(5) and NYSE American Rule 7.35E(e)(5). Unlike NYSE Arca and NYSE American, the Exchange does not disseminate a ''Market Imbalance.'' Accordingly, the Exchange proposes a difference to its proposed rule text to refer to an ''Imbalance of sell (buy) Market Orders.'' Otherwise, the basis for why the Exchange would not conduct an LULD Auction at the initial Reopening Time is no different than as on NYSE Arca or NYSE American.

Proposed Rule 7.35C(e)(2) would provide that the Reopening Time for an LULD Auction would be extended as follows:

• If there is an Impermissible Price at the initial Reopening Time, the Trading Pause would be extended an additional five minutes and a new Reopening Time would be disseminated (''First Extension'') and the Exchange would not conduct an LULD Auction before the Reopening Time for the First Extension (see proposed Rule 7.35C(e)(2)(A)). This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(6)(A) and NYSE American Rule 7.35E(e)(6)(A) without any substantive differences.

• If there is an Impermissible Price at the end of the First Extension, the Trading Pause would be extended an additional five minutes and a new Reopening Time would be disseminated (''Subsequent Extension'') and the Exchange would conduct an LULD Auction before the Reopening Time for a Subsequent Extension if the Indicative Match Price, before being adjusted based on Auction Collars, is at or within the applicable Auction Collars and there is no Imbalance of Market Orders (see proposed Rule 7.35C(e)(2)(B)). This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(6)(B) and NYSE American Rule 7.35E(e)(6)(B) without any substantive differences.

• The Trading Pause would continue to be extended if there is an Impermissible Price at the Reopening Time for a Subsequent Extension (see proposed Rule 7.35C(e)(2)(C)). This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(6)(C) and NYSE American Rule 7.35E(e)(6)(C) without any substantive differences.

Proposed Rule 7.35C(e)(3) would set forth the Auction Collars for such LULD Auctions. As proposed, for securities with an Auction Reference Price above $3.00, the Price Collar Threshold for Auction Collars would be the Auction Reference Price multiplied by 5 percent and for securities with an Auction Reference Price $3.00 and below, the Price Collar Threshold for Auction Collars would be $0.15. This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(7) and NYSE American Rule 7.35E(e)(7) without any substantive differences.

would need to facilitate the Core Open Auction for such security, it would not be feasible to request the DMM to electronically facilitate such Auction.

[89] *See* Securities Exchange Act Release No. 83044 (April 12, 2018), 83 FR 17205 (April 18, 2018) (File No. 4–631) (Order approving seventeenth amendment to LULD Plan to extend pilot period of LULD Plan to April 15, 2018). The LULD Plan Participants have filed to make the LULD Plan permanent. *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (Notice of filing of eighteenth amendment to LULD Plan).

• Proposed Rule 7.35C(e)(3)(A) would specify the Auction Reference Price for LULD Auctions as follows: If the Limit State that preceded the Trading Pause was at the Lower (Upper) Price Band, the Auction Reference Price would be the Lower (Upper) Price Band. This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(7)(A) and NYSE American Rule 7.35E(e)(7)(A) without any substantive differences.

• Proposed Rule 7.35C(e)(3)(B) would specify the Initial Auction Collars for an LULD Auction as follows: At the initial Reopening Time, if the Auction Reference Price is the Lower (Upper) Price Band, the Lower (Upper) Auction Collar would be the Auction Reference Price decreased (increased) by the Price Collar Threshold, rounded to the nearest MPV, provided that the lowest Auction Collar would be one MPV above $0.00, and the Upper (Lower) Auction Collar would be the Upper (Lower) Price Band. This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(7)(B)(i) and NYSE American Rule 7.35E(e)(7)(B)(i) without any substantive differences.

• Proposed Rule 7.35C(e)(3)(C) would specify the Auction Collars for Extensions for an LULD Auction as follows: The Auction Collar on the side of the Impermissible Price would be widened for each Extension and the Auction Collar on the opposite side of the Impermissible Price would remain the same as the last-calculated Auction Collar on that side. The proposed rule would further provide that (i) if the Impermissible Price is on the side of the Lower (Upper) Auction Collar, the last-calculated Lower (Upper) Auction Collar would be decreased (increased) by a Price Collar Threshold and the Upper (Lower) Auction Collar would stay the same; and (ii) if the side of the Impermissible Price changes from the Lower (Upper) Auction Collar to the Upper (Lower) Auction Collar, the last-calculated Upper (Lower) Auction Collar would be widened for that Extension and the last-calculated Lower (Upper) Auction Collar would remain the same. This proposed rule text is based on NYSE Arca Rule 7.35–E(e)(7)(C) and subparagraph (i) and (ii) thereto and NYSE American Rule 7.35E(e)(7)(C) and subparagraph (i) and (ii) thereto without any substantive differences.

Proposed Rule 7.35C(e)(4) would provide that as provided for in proposed Rule 7.35(d), described above, if the Reopening Time for an LULD Auction under this Rule would be in the last ten minutes of trading before the end of Core Trading Hours, the Exchange would not conduct an LULD Auction and will not transition to continuous trading and in such case, the Auction Collars for the Exchange-facilitated Closing Auction would be the most recently widened Auction Collars for the LULD Auction that did not occur. This proposed rule text is based in part on NYSE Arca Rule 7.35–E(e)(10)(B) and NYSE American Rule 7.35E(e)(10)(B) with non-substantive differences because, as described above, the Exchange proposes to specify in proposed Rule 7.35(d) that the Exchange would not reopen trading in the last ten minutes of trading before the end of Core Trading Hours. Accordingly, proposed Rule 7.35C(e)(4) is more narrowly tailored to specify what the Auction Collars for the Closing Auction would be if the Reopening Time for an LULD Auction were to be in the last ten minutes of trading. In such case, the Exchange proposes the same methodology as NYSE Arca and NYSE American.

Proposed Rule 7.35C(f) would set forth the auction allocation methodology for Exchange-facilitated Auctions. As proposed, all orders eligible to trade in the applicable Auction would be matched and traded at the Indicative Match Price. As described above, this Indicative Match Price would already be subject to the applicable Auction Collars. Accordingly, with this proposed rule text, the Exchange would never facilitate an Auction at a price outside the Auction Collars.

Proposed Rule 7.35C(f) would further provide that orders eligible to trade in an Auction would be ranked as provided for in Rule 7.36(c)–(g) consistent with the priority ranking associated with each order. This proposed rule text is based on the second sentence of NYSE Arca Rule 7.35–E(a)(6) and the second sentence of NYSE American Rule 7.35E(a)(6).

The Exchange proposes to specify this ranking because, unlike proposed Rules 7.35A(g) and 7.35B(g), in an Exchange-facilitated Auction, not all better-priced orders would be guaranteed to participate. In such case, the Exchange proposes that orders would be allocated in the following order:

• Better-priced orders would be traded in price-time priority (see proposed Rule 7.35C(f)(1)).

• At-priced orders would be traded as described in Rule 7.35A(h) (for Core Open and Trading Halt Auctions) or Rule 7.35B(h) (for Closing Auctions).

This proposed allocation methodology is based in part on current Rule 123D(a)(3)(C), but with differences to use both the existing NYSE Arca and NYSE American allocation methodology for better-priced orders, which would be based on how the orders are ranked pursuant to Rule 7.36(c)–(g), and the Exchange's proposed auction allocation model under Pillar for at-priced orders, which would include parity allocations, as applicable, as described in proposed Rule 7.35A(h)(2) and 7.35B(h)(2). The Exchange proposes to use price-time priority for better-priced orders because when the Exchange facilitates an Auction, such orders would no longer be guaranteed to participate.

Finally, proposed Rule 7.35C(g) would specify the treatment of unexecuted orders. Proposed Rule 7.35C(g)(1) would provide that if a security opens or reopens on a trade, orders that are better-priced than the Auction Price and were not executed in the applicable Auction would be cancelled. This proposed rule is based in part on Rule 123D(a)(6), which similarly provides that better-priced orders would be cancelled after an Exchange-facilitated Auction.

Proposed Rule 7.35C(g)(2) would provide that if a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar, buy (sell) orders better-priced than the upper (lower) Auction Collar would be cancelled before such quote is published. This proposed rule text is based in part on Rule 123D(a)(6)(C) with non-substantive differences to use Pillar terminology and a substantive difference that the Exchange would cancel such orders before publishing a quote.

Proposed Amendments to Rule 7.11 (LULD Plan)

Rule 80C addresses the LULD Plan and related Trading Pauses for Exchange-listed securities.[90] Rule 7.11 addresses the LULD Plan for UTP Securities. To set forth the Exchange's role in re-opening Exchange-listed securities following a Trading Pause on Pillar, the Exchange proposes to amend Rule 7.11(b) to add rule text based on both Rule 80C(b) and NYSE Arca Rule 7.11–E(b) and NYSE American Rule 7.11E(b).

First, the Exchange proposes to delete the existing text under Rule 7.11(b)(1), which no longer represents how exchanges trading securities on an unlisted trading privileges basis may reopen securities subject to a Trading Pause.[91]

[90] The term ''Trading Pause'' as used in Rule 80C and proposed Rule 7.11 has the same meaning as the defined term in the LULD Plan.

[91] This proposed rule change aligns Rule 7.11(b) with the same rules of NYSE Arca and NYSE American, which were previously amended. *See* Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017)

Second, the Exchange proposes to add to paragraph (b) of Rule 7.11 to provide that at the end of the Trading Pause, the Exchange would re-open the security in accordance with the procedures set forth in the Rule 7.35 Series for a Trading Halt Auction and that any interest repriced pursuant to paragraph (a)(5) of this Rule would return to its original order instructions for purposes of the re-opening transaction following a Trading Pause. This proposed rule text is based on Rule 80C(b) with a non-substantive difference to update the rule cross reference.[92]

Third, the Exchange proposes to add subparagraph (b)(1) of Rule 7.11 to provide: Notification of Trading Pauses. If a Trading Pause is triggered under this Rule or if the Exchange is unable to reopen trading at the end of the Trading Pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934.

This proposed rule text is based on Rule 80C(b)(1) without any differences.

Finally, the Exchange proposes to add subparagraph (b)(2) of Rule 7.11 to provide that if a primary listing market issues a Trading Pause, the Exchange would resume trading as provided for in Rule 7.18(b). Because Rule 80C is not applicable to UTP Securities that trade on the Pillar trading platform, Rule 80C does not currently include this rule text. Instead, this proposed rule text is based on NYSE Arca Rule 7.11–E(b)(2) and NYSE American Rule 7.11E(b)(2) with a non-substantive difference to update the rule cross reference to an Exchange rule.

In connection with this change, the Exchange proposes to amend the preamble to Rule 80C so that it provides that ''[t]his Rule is not applicable to trading on the Pillar trading platform.''

Proposed Amendments to Rule 7.12 (Market-Wide Circuit Breakers)

Rule 80B addresses trading halts due to extraordinary market volatility and is a common rule across all equities exchanges. For trading on Pillar, the Exchange proposes that the text governing trading halts due to extraordinary market volatility will be included under Rule 7.12, which is aligned with the same rule number for NYSE Arca and NYSE American. The Exchange does not propose any substantive differences to Rule 7.12 as compared to Rule 80B. The Exchange proposes that the preamble paragraph, which addresses the pilot period for the rule, would continue to reference Rule 80B, because if the pilot is not approved as permanent, then the prior version of Rule 80B would be in effect for the Exchange (there is no prior version of Rule 7.12 for the Exchange). The Exchange proposes a second non-substantive difference to replace the cross reference in Rule 7.12(c)(1) from Rule 123D to instead reference the Rule 7.35 Series, which as discussed above, would address Trading Halt Auctions.

The Exchange also proposes to amend Rule 7.18(a) to update a rule cross reference from Rule 80B to Rule 7.12. In connection with this change, the Exchange proposes to add a preamble to Rule 80B that would provide that ''[t]his Rule is not applicable to trading on the Pillar trading platform.''

Proposed Amendments to Rule 7.16 (Short Sales)

When the Exchange added Rule 7.16, it designated specified subparagraphs of that rule as ''Reserved'' because at that time, the Exchange did not include rule text relating to Exchange-listed securities in Rule 7.16. For the transition of Exchange-listed securities to Pillar, the Exchange proposes to include text from Rule 440B relating to Exchange-listed securities in those reserved sections of Rule 7.16.

First, the Exchange proposes rule text from Rule 440B(c), relating to the Determination of Trigger Price, for Rule 7.16(f)(3) without any substantive differences. The Exchange proposes a non-substantive difference to refer to ''the Exchange'' rather than ''Exchange systems.'' Text from Rule 440B(c)(1) would be included in proposed Rule 7.16(f)(3)(A) with a non-substantive difference to use Pillar terminology. Specifically, rather than the current rule, which uses the phrase ''until it opens trading for that security,'' the proposed rule would use the phrase ''until the Core Trading Session begins for that security.''

Second, the Exchange proposes rule text from Rule 440B(d)(1) and (2), relating to circumstances when a Short Sale Price Test may be lifted, for proposed Rule 7.16(f)(4)(A) and (B) with only a non-substantive difference to update the rule cross reference relating to clearly erroneous executions to Rule 7.10. The Exchange also proposes to amend Rule 7.16(f)(4) to add the term ''listing'' to conform it to Rule 440B(d) text.

Finally, the Exchange proposes to that proposed Rule 7.16(f)(8), relating to single-priced opening, re-opening, and closing transactions, would be based on current Rule 440B(h) without any substantive differences. Specifically, in 2011, the Exchange received exemptive relief from Rule 201 of Regulation SHO for single-priced opening, reopening, and closing transactions, which relief is codified in Rule 440B(h).[93] When Exchange-listed securities transition to Pillar, the manner by which auctions would be conducted under the Pillar Auction Rules will function in a substantially similar manner as under the Current Auction Rules, and therefore the reasons that serve as the basis for the exemptive relief would continue. Accordingly, the Exchange proposes to continue to operate consistent with Rule 440B(h)(1)—(3) and the exemptive relief previously granted. To ensure continuity, proposed Rule 7.16(f)(8)(A)(i)—(iii), (B)(i)—(iii), and (C) is based on Rule 440B(h)(1)—(3), with only non-substantive differences to use Pillar terminology and to break the rule text down into multiple subparagraphs. The Exchange also proposes a non-substantive difference to refer to ''the Exchange'' rather than ''Exchange systems.'' The Exchange believes that the proposed non-substantive differences will promote clarity in Exchange rules and make the text easier to navigate.

Proposed Amendments to Rule 7.18 (Halts)

Because the Exchange will be conducting Trading Halt Auctions in Exchange-listed securities, the Exchange proposes to amend Rule 7.18(c) to delete the ''Reserved'' designation and provide that the Exchange would process new and existing orders in securities listed on the Exchange during a halt or pause as follows:

- Cancel any unexecuted portion of Non-Displayed Limit Orders, Non-Displayed Primary Pegged Orders, MPL Orders, and proposed Floor broker cross transaction pending in the Cross Function pursuant to Rule 76.10 (see proposed Rule 7.18(c)(1)).[94]

(SR–NYSEArca–2016–130) (Approval Order) and 81968 (October 27, 2017), 82 FR 50898 (November 2, 2017) (SR–NYSEAmerican–2017–30) (Notice of filing and immediate effectiveness of proposed rule change).

[92] *See also* NYSE Arca Rule 7.11–E(b) and NYSE American Rule 7.11E(b).

[93] *See* Letter from James Brigagliano, Deputy Director, Commission, to Janet McGuinness, Senior Vice President and Secretary, NYSE Euronext dated (February 7, 2011), which is available here: *https://www.sec.gov/divisions/marketreg/mr-noaction/2011/nyseuronext020711-201.pdf.*

[94] Currently, Floor brokers can effect proposed cross transactions in both Exchange-listed and UTP Securities pursuant to Rule 76. In addition, the Cross Function described in current Rule 76.10 and the priority for specified block-sized cross transactions described in current Rule 72(d) are available for proposed cross transactions in

Continued

• Maintain any unexecuted quantity of Market Orders (see proposed Rule 7.18(c)(2)).

• Reprice all other resting orders in the Exchange Book to their limit price (see proposed Rule 7.18(c)(3)).

• Accept and process all cancellations (see proposed Rule 7.18(c)(4)).

• Reject incoming Limit Orders designated IOC, Non-Displayed Limit Orders, Non-Displayed Primary Peg Orders, MPL Orders, and proposed Floor broker cross transactions pursuant to Rule 76.10 (see proposed Rule 7.18(c)(5)).

• Accept all other incoming order instructions until the Auction Processing Period for the Trading Halt Auction, at which point, Rule 7.35(e) (described above) would govern the entry of incoming orders and order instructions.

This proposed rule text is based in part on NYSE Arca Rule 7.18–E(c) and NYSE American Rule 7.18E(c), with certain differences. This proposed rule text is intended to mirror what order types and modifiers in Exchange-listed securities would be eligible to participate in a Trading Halt Auction: (1) Orders that are not eligible to trade in a Trading Halt Auction would be cancelled; (2) new orders that are not eligible to participate in an Auction would be rejected; (3) unexecuted Market Orders would be eligible to participate in the Trading Halt Auction; and (4) consistent with the proposal, above, orders participate in an Auction at their limit price and all other resting orders in the Exchange Book would be priced to their limit price. The Exchange would also continue to accept and process cancellations, and would continue with this order processing until the Auction Processing Period, at which time the order handling described in proposed Rule 7.35(e) would begin.

Proposed Amendments to Rule 7.32 (Order Entry)

On Pillar, orders entered that are greater than five million in shares in size are rejected.[95] By contrast, pursuant to Rule 1000, for Exchange-listed securities only, orders up to 1,000,000 shares are eligible for automatic execution and incoming orders of more than 1,000,000 shares that are marketable on arrival will be rejected. Upon advance notice to market participants, the Exchange may increase the order size eligible for automatic executions up to 5,000,000 shares on a security-by-security basis.[96] When Exchange-listed securities transition to Pillar, they will be subject to the order entry size set forth in Rule 7.32 rather than the order entry size specified in the first paragraph of Rule 1000.

Rule 1000 requirements relating to maximum system order size accepted by Exchange systems are applicable to trading in both Exchange-listed securities and UTP Securities on Pillar and provide that the Exchange currently accepts a maximum order size of up to 25,000,000 shares in size, i.e., for orders that are not eligible for automatic execution. This rule allows member organizations to enter MOC and LOC Orders, which are not eligible for automatic execution, up to 25,000,000 shares in size. It also permits DMMs and Floor brokers to enter interest for auctions up to 25,000,000 shares in size and Floor brokers to enter cross transactions pursuant to Rule 76 up to 25,000,000 shares in size. The current rule also provides that Floor broker systems shall accept a maximum order size of up to 99,000,000 shares, which enables Floor brokers to accept larger-sized not held, parent orders from their customers.

The Exchange proposes to amend Rule 7.32 to reflect the maximum order size that Exchange systems will accept in specified circumstances, consistent with Rule 1000. As proposed, in Auction-Eligible Securities, the Exchange would accept orders defined in Rule 7.31(c),[97] DMM Auction Liquidity as defined in Rule 7.35, and Floor Broker Interest intended for the Closing Auction as defined in Rule 7.35B(a)(1) up to 25 million shares in size. The Exchange further proposes to provide that in all securities traded on the Exchange, the Exchange would accept proposed cross transactions under Rule 76 up to 25 million shares in size. This proposed rule text would address the same order-entry scenarios contemplated in Rule 1000 (i.e., orders that are not eligible for automatic execution) without any substantive differences. The Exchange proposes non-substantive differences to use Pillar terminology to specify the specific order types that would be eligible for this larger entry size.

The Exchange also proposes to amend Rule 7.32 to provide that Floor broker systems would accept a maximum order size up to 99 million shares. This proposed rule text is based on the last sentence of the second paragraph of Rule 1000 without any substantive differences.

Proposed Amendments to Rule 7.34 (Trading Sessions)

Pursuant to Rule 7.34, UTP Securities trading on Pillar are eligible to trade in the Early Trading Session, which begins at 7:00 a.m. By contrast, pursuant to Rule 51, the hours of trading for Exchange-listed securities begins at 9:30 a.m. When the Exchange transitions Exchange-listed securities to Pillar, it proposes to maintain that such securities would be eligible to trade in the Core Trading Session only. The Exchange proposes to amend Rule 7.34(a) to specify the distinction between which securities would be eligible to trade in each session.

First, the Exchange proposes to amend Rule 7.34(a)(1) to provide that only UTP Securities are eligible to trade in the Early Trading Session. Consistent with current practice, the Exchange would begin accepting orders in all securities at the same time. Accordingly, the Exchange proposes to further amend Rule 7.34(a)(1) to provide that the Exchange would begin accepting orders in all securities 30 minutes before the Early Trading Session begins.

Second, the Exchange proposes to amend Rule 7.34(a)(2) to provide that all securities traded on the Exchange would be eligible to trade in the Core Trading Session. The Exchange further proposes to move the current text to new subparagraph (A), which would continue to provide that the Core Trading Session will begin for each security at 9:30 a.m. and end at the conclusion of Core Trading Hours. Proposed Rule 7.34(a)(2)(A) would further provide that this text would be applicable to UTP Securities only.

Proposed Rule 7.34(a)(2)(B) would be new and would address Exchange-listed securities. As proposed, for Exchange-listed securities, the Core Trading Session would begin with the Core Open Auction, which can take place during Core Trading Hours only, and would end for each security at the later of the conclusion of Core Trading Hours or, if a Closing Auction is conducted, the Closing Auction. This proposed rule text reflects how trading in Exchange-listed securities currently functions

Exchange-listed securities only. When Exchange-listed securities transition to Pillar, the Exchange does not propose any differences to how these rules would function and therefore they will continue to be applicable to Floor broker cross transactions. The Exchange proposes to amend the preamble to Rule 72 to specify that paragraph (d) and Supplementary Material .10 of that Rule would continue to be applicable to trading of Exchange-listed securities. The Exchange does not propose any changes to the preamble to Rule 76.

[95] *See* Rule 7.32.

[96] *See* Rule 1000.

[97] As described above, Rule 7.31(c) specifies the Auction-Only Orders available on the Exchange. Consistent with current functionality, in Auction-Eligible Securities, the Exchange would accept Auction-Only Orders up to 25,000,000 million shares in size.

under Rules 51, 52, and Rule 123C: Such securities are not eligible to begin trading until 9:30 a.m. and all bids and offers must be made by 4:00 p.m. The proposed rule text uses Pillar terminology to reflect these current requirements.

The Exchange further proposes that Rule 7.34(a)(2)(B) would provide that, except as provided for in Rules 7.35B(a)(1) and (2) and (j)(2), all order instructions must be entered by the end of Core Trading Hours and bids and offers represented orally by a Floor broker must be represented at the point of sale by the end of Core Trading Hours. This proposed rule text is based on Rule 52, which provides that dealings on the Exchange shall be limited to the hours during which the Exchange is open for the transaction of business, which is currently described in Rule 51. Rule 52 further provides that no member shall make any bid, offer, or transaction on the Exchange before or after those hours.[98] As described above, proposed Rules 7.35B(a)(1) and (2) describe how Floor Broker Interest and DMM Interest can be entered for the Closing Auction, including the manner by which Floor Broker Interest is electronically entered into Exchange systems for participation in the Closing Auction. Proposed Rule 7.35B(j)(2)(A) provides for a temporary suspension of the requirement for order instructions to be entered by the end of Core Trading Hours (which, under the Current Auction Rules, is a temporary suspension of Rule 52), and proposed Rule 7.35B(j)(2)(B) provides for a temporary suspension of the prohibition of cancelling a MOC or LOC Order after two minutes before the scheduled end of Core Trading Hours.

Third, the Exchange proposes to amend Rule 7.34(b)(1) to reflect how orders would be deemed designated. Consistent with existing functionality that UTP Securities are eligible to trade in both the Early and Core Trading Sessions, the Exchange proposes to amend current Rule 7.34(b)(1), which provides that unless otherwise specified in Rule 7.34(c), an order entered before or during the Early or Core Trading Session will be deemed designated for the Early Trading Session and the Core Trading Session, to specify that this rule pertains to orders in UTP Securities only. The Exchange further proposes to amend Rule 7.34(b)(1) to add that all orders in Exchange-listed securities would be deemed designated for the Core Trading Session only. This proposed rule text uses Pillar terminology to reflect current functionality.

Finally, the Exchange proposes new Rule 7.34(c)(1)(D) to specify that Non-Displayed Limit Orders, MPL Orders, Limit Orders designated IOC, and proposed Floor broker cross transactions pursuant to Rule 76.10 in Auction-Eligible Securities would be rejected if entered before the Core Trading Session begins. As noted above, these order types in Auction-Eligible Securities would not be eligible to participate in the Core Open Auction and based on proposed Rule 7.18(c)(5), would be rejected if entered during a halt or pause. For similar reasons, the Exchange proposes to reject such orders if entered before the Core Trading Session begins.[99] In addition, currently, the Exchange does not accept proposed Floor broker cross transactions pursuant to Rule 76.10 until a security has opened for trading. Accordingly, the proposed rule text uses Pillar terminology to describe this functionality.

Proposed Amendment to Rule 7.36 (Order Ranking and Display)

As described above, the Exchange proposes to amend Rule 7.36(a) to add the DMM Participant. The Exchange also proposes to amend Rule 7.36(h) to specify in new subparagraph (5) that Setter Priority would not be available for any allocations in an Auction. This proposed rule text is based on how Rule 72(a)(ii), which describes setter interest, functions for Exchange-listed securities today. Specifically, as provided for in Rule 72(b), once priority is established by setting interest, setting interest retains priority for any execution at that price when that price is at the Exchange BBO. Because an auction is a single-priced transaction, which is not considered an execution at the Exchange BBO, currently, setter interest allocations are not available for auction allocations. Accordingly, proposed Rule 7.36(h)(5) would use Pillar terminology to describe current functionality, which would not be changing.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[100] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[101] in particular, because 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 regulating, clearing, settling, processing information with respect to, and 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Definitions. The Exchange believes that the proposed amendments to Rule 1.1 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would add definitions to the Pillar Platform Rules to support the transition of Exchange-listed securities to Pillar, including those relating to DMMs, IPOs, and Direct Listings. These proposed definitions are not new and reflect current functionality and definitions. The Exchange believes that the proposed definition of Official Closing Price, which is based on the NYSE Arca and NYSE American version of this definition rather than the current Exchange version of this definition, would remove impediments and perfect the mechanism of a free and open market and a national market system because it would provide for a standardized methodology for determining the Official Closing Price across affiliated exchanges, thereby promoting consistency in Exchange rules for how such price would be determined.

DMM Participant. The Exchange believes that the proposed amendments to Rules 7.36 and 7.37 to add the DMM as a Participant for the purpose of how executions are allocated would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate the transition of Exchange-listed securities to the Pillar platform. Pursuant to Rule 103B, all securities listed on the Exchange are assigned to a DMM and pursuant to Rule 104, DMMs have specified affirmative responsibilities with respect to their assigned securities. These obligations are not changing when Exchange-listed securities transition to Pillar. The proposed amendments would describe how DMMs would

[98] The reference to the term ''member'' in Rule 52 refers to a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Floor of the Exchange, i.e., a Floor broker or DMM. *See* Rule 2(a).

[99] Rule 7.34(c)(1)(A) already provides that Non-Displayed Primary Pegged Orders would be rejected if entered before the Core Trading Session and this rule text is applicable to such orders in both UTP Securities and Auction-Eligible Securities.

[100] 15 U.S.C. 78f(b).

[101] 15 U.S.C. 78f(b)(5).

participate in the allocation of executions in their assigned securities on Pillar consistent with the existing parity allocation model described in Rule 7.37(b). The Exchange does not propose any substantive differences to how a DMM would participate in an allocation on Pillar as compared to how a DMM currently participates in an allocation under Rule 72(c).

Auction-Only Orders. The Exchange believes that the proposed changes to Rule 7.31 relating to Auction-Only Orders would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest by introducing on Pillar existing order types currently available for trading of Exchange-listed securities. As noted above, currently, the Exchange trades only UTP Securities on Pillar. To facilitate the transition of Exchange-listed securities to Pillar, the Exchange proposes to amend Rule 7.31(c) to expand the Auction-Only Orders available on Pillar to include order types currently available on the Exchange.

The Exchange believes that amending the descriptions of existing order types on Pillar—LOOs, MOOs, LOCs, and MOCs—would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing transparency regarding how such orders would function depending on whether such order would be for a UTP Security or an Auction-Eligible Security. As is the case today, LOOs, MOOs, LOCs, and MOCs in UTP Securities would be routed to the primary listing exchange for that security. And as is the case today for Exchange-listed securities, these same orders in Exchange-listed securities would participate in auctions on the Exchange.

The proposed Opening and Closing D Orders, which the Exchange now proposes to define separately under Auction-Only Orders in the Pillar rules, are based on existing d-Quote functionality as described in Rule 70.25(a)(ii). The Exchange believes that these proposed order types would remove impediments to and perfect the mechanisms of a free and open market and a national market system because they would ensure continuity of order types that would be available when Exchange-listed securities transition to Pillar. The proposed differences between these orders and d-Quote functionality are largely non-substantive to provide additional transparency regarding how such orders would function on Pillar. Like d-Quotes, an Opening or Closing D Order in an Exchange-listed security would be available to Floor brokers only and would be triggered to exercise discretion only in an auction. For example, a Closing D Order entered prior to the Closing Auction would function as a Limit Order and would be eligible for execution or routing based on its limit price during continuous trading. The Exchange notes that the proposed Opening and Closing D Orders would not have any execution priority compared to other orders trading in an auction. Today, all better-priced orders are guaranteed to participate in an auction, and the Exchange proposes to maintain that auction logic when it transitions to Pillar. If the discretionary price of an Opening or Closing D Order were better-priced than the price of the auction, it would participate in that auction just as any other better-priced order would participate in such auction. Therefore, the proposed Opening and Closing D Orders do not present any new or novel issues.

The Exchange further believes that the proposed difference from d-Quotes to reject both the entry *and* cancellation of Closing D Orders that are entered ten seconds or less before the scheduled time for the Closing Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency and would also promote fair and orderly auctions by reducing the potential for a Closing D Order to be changed leading into the close.

Finally, the Exchange believes that the proposed Closing IO Order would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based on the CO Order described under Rule 13(c)(1), which is currently available for Exchange-listed securities. The Exchange similarly proposes to offer the Closing IO Order for Exchange-listed securities on Pillar and such order type would ensure continuity in what auction orders would be available for when the Exchange transitions trading of Exchange-listed securities to Pillar.

Order Eligibility for Auctions. The Exchange believes that the proposed amendments to Rule 7.31 to specify which orders and modifiers would not be eligible to participate in an auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency in Exchange rules regarding which orders are not auction eligible. With two exceptions, the proposed rules are based on how the Exchange currently functions, as described in current rules. The Exchange proposes a substantive difference that orders with an IOC time-in-force designation would not be eligible to participate in an auction. The Exchange believes that this proposed difference would be consistent with the terms of such orders, which requires them to be cancelled if not immediately executable. In addition, this proposed difference is based on the rules of NYSE Arca and NYSE American.

The second substantive difference concerns the treatment of Primary Pegged Orders, which would not be eligible to participate in the Closing Auction. The Exchange believes that this proposed difference would remove impediments to and perfect the mechanism of a free and open market and a national market system by streamlining order processing. Specifically, because orders would participate in a Closing Auction at their limit price and because Primary Pegged Orders are pegged to the same-side PBBO and are not displayed at their limit price, the Exchange believes that this proposed difference would reduce the number of orders that would need to be repriced in order to participate in the Closing Auction.

Limit Order Price Protection. The Exchange believes that the proposed amendments to Rule 7.31(a)(2)(B) relating to Limit Order Price Protection would remove impediments to and perfect the mechanism of a free and open market and a national market system because Limit Order Price Protection is designed to reject Limit Orders that are priced too far away from the prevailing NBBO. On the Exchange, if the first opportunity for an order on the Exchange to trade is in an Auction, these considerations are not applicable because such orders would execute in the Auction at the Auction Price, and not the limit price of the order. For similar reasons, because the first opportunity for Floor Broker Interest, DMM Interest entered after 4:00 p.m. for the Closing Auction, and orders solicited pursuant to proposed Rule 7.35B(j)(2)(A) to trade would be the Closing Auction, the Exchange believes that it would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system for these orders not to be subject to Limit Order Price Protection.

Proposed Rule 7.35 Series. The Exchange believes that the proposed Rule 7.35 Series would remove impediments to and perfect the mechanism of a free and open market and a national market system because it

would consolidate rules governing Auctions on the Exchange in one location in the rulebook. As discussed in detail above, the proposed Pillar Auction Rules, which are set forth in the Rule 7.35 Series, are largely based on the Current Auction Rules. More specifically, and as discussed in greater detail above, when Exchange-listed securities transition to Pillar, the manner by which Auctions will be conducted on the Exchange will function substantially the same as how they currently function under the Current Auction Rules. For example, DMMs will continue to be primarily responsible for facilitating Auctions on the Exchange, the Exchange will continue to disseminate the same information in connection with Auctions, and the manner by which shares will be allocated in an Auction will be the same.

While functionality would be substantially the same, in contrast to the Current Auction Rules, the proposed Rule 7.35 Series describe Auctions in sequential rules. In addition, in contrast to the Current Auction Rules, the proposed Rule 7.35 Series would use consistent Pillar terminology to describe functionality that is common to all Auctions. In addition, the proposed rule numbering is aligned with the rule numbers used by NYSE Arca and NYSE American regarding auctions on those exchanges, thereby promoting consistency across affiliated exchanges regarding how to navigate their respective rulebooks.

The Exchange further believes that the proposed structure of the Rule 7.35 Series would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to consolidate those rules that are applicable to any Auction in proposed Rule 7.35 (General). By consolidating functionality that would be applicable to all Auctions on the Exchange in Rule 7.35, including definitions, auction ranking, Auction Imbalance Information, openings and reopenings in the last ten minutes of trading, order processing during an Auction Processing Period, transition to continuous trading following an Auction, and Auction functions during a Short Sale Period, the Exchange believes that its rules would be easier to navigate. This proposed structure would also reduce the need for duplication in its rules.

The Exchange believes that proposed Rule 7.35A would remove impediments to and perfect the mechanism of a free and open market and a national market system because that rule would use Pillar terminology to describe how DMM-facilitated Core Open and Trading Halt Auctions would function. By contrast, under the Current Auction Rules, this functionality is described in Rules 15, 115A, and 123D. For similar reasons, the Exchange believes that proposed Rule 7.35B would remove impediments to and perfect the mechanism of a free and open market and a national market system because that rule would use Pillar terminology to describe how DMM-facilitated Closing Auctions would function. In addition, proposed Rule 7.35B would use, where feasible, parallel subparagraph numbering as proposed Rule 7.35A. The Exchange believes that the proposed structure of Rules 7.35A and 7.35B is designed to make those rules easier to navigate.

To the extent that the Pillar Auction Rules use Pillar terminology to describe current auction functionality, the Exchange believes that the proposed Pillar Auction Rules would promote just and equitable principles of trade and would remove impediments to and perfect the mechanism of a free and open market and a national market system because these rules would not result in any changes to how auctions function on the Exchange. Rather, the proposed Pillar Auction Rules would allow for the continued, uninterrupted operation of auctions when Exchange-listed securities transition to Pillar while at the same time updating the rule text to use consistent terminology.

As described in detail above, in the move to Pillar, the Exchange has identified a number of enhancements to how auctions would function on the Exchange that would result in a substantive difference from the Current Auction Rules. The Exchange believes that these substantive differences are consistent with the Act for the following reasons:

- The Exchange believes that using the Consolidated Last Sale price as the basis for various reference prices for openings and reopenings and the Exchange Last Sale Price as the basis for various reference prices for closings would remove impediments to and perfect the mechanism of a free and open market because, as described in detail above, use of these proposed reference prices is designed, for the most part, to use the same reference price as under the Current Auction Rules. However, there would be specified circumstances when the Pillar Auction Rule reference price would be different from Current Auction Rules, and the Exchange believes that those differences would allow for the Exchange to use the most recent valuation for purposes of assessing price movement leading into an Auction. For example, the use of the term Consolidated Last Sale Price would incorporate consolidated last-sale eligible trades after 9:30, and if none, the Official Closing Price of a security, for purposes of providing guidance to the DMM and determining the Imbalance Reference Price for opening or reopening security. And for the Closing Auction, use of the Exchange Last Sale Price would incorporate the Official Closing Price as a reference price if there are no trades on the Exchange on a trading day, which would be new.
- The Exchange believes that updating Auction Imbalance Information, which is made available over the Exchange's proprietary data feeds, every second rather than in five-minute, one-minute, or five-second intervals as under the Current Auction Rules, and beginning the dissemination of Auction Imbalance Information for the Core Open Auction at 8:00 a.m. rather than 8:30 a.m., would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency regarding the auction process at the Exchange. These proposed changes are also based on the approved rules of NYSE Arca and NYSE American. The Exchange further believes that continuing to disseminate Auction Imbalance Information for the Closing Auction until such Auction is conducted would similarly remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency leading into the Closing Auction, particularly when Floor Broker Interest is incorporated into that information.
- The Exchange believes that specifying that the reference price used for determining whether to publish a pre-opening indication for securities that have limited publicly-available pricing information available would be a price as determined under proposed Rule 1.1(s)(1)(F) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would incorporate an existing price into rules relating to pre-opening indications. The reference price used by the DMM to determine whether to publish a pre-opening indication is not a publicly-disclosed price. Rather, DMMs use that reference price as a benchmark to determine whether to publish a pre-opening indication. The actual pre-opening indication price range that is disseminated publicly is

based on what the DMM anticipates the opening price would be, based on orders in the Exchange Book as well as the DMM's own liquidity. Currently, pursuant to Rule 123C(1)(e)(i)(C), the Exchange already determines a price for such securities that is a derived last sale price, and, as described above, that current rule will be set forth in proposed Rule 1.1(s)(1)(F), unchanged. The Exchange believes that using this existing price for purposes of determining whether to publish a pre-opening indication would promote transparency in Exchange rules regarding what guidance the DMM would have for whether to publish a pre-opening indication for a new listing that is not otherwise addressed in proposed Rule 7.35A(d)(2)(A)(i)–(iv).

• The Exchange believes that the proposed changes to how Floor Broker Interest would be entered into Exchange systems for participation in the Closing Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would reduce the burden on the DMM to electronically enter orders on behalf of Floor brokers, thereby leading to a more efficient closing process. As described above, as under Current Auction Rules, Floor Broker Interest intended for the Closing Auction must be orally represented by the end of Core Trading Hours. The proposed difference involves a processing enhancement under Pillar whereby the Floor broker, rather than the DMM, would electronically enter such previously-represented oral interest after 4:00 p.m. so that it may be processed as part of the Closing Auction. The DMM would still be responsible for validating such Floor Broker Interest by being required to accept such electronic submission before the interest would be ranked and eligible for the Closing Auction and included in the Auction Imbalance Information. The Exchange believes that this requirement would promote just and equitable principles of trade as it would serve as a validation that such interest was properly represented orally by the end of, but not after, Core Trading Hours.

• The Exchange believes that the proposed substantive difference that Floor Broker Interest for the Closing Auction must include a limit price and would be processed as part of the Auction allocation the same as any other order with a limit price would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would standardize the processing of orders with a limit price in the Closing Auction and would eliminate any differences of how interest represented orally at the close by a Floor broker would be processed as compared to electronically-entered orders.

• The Exchange believes that it would remove impediments and perfect the mechanism of a free and open market and a national market system to disseminate a Regulatory Closing Imbalance, if required, at the Closing Auction Imbalance Freeze Time, regardless of whether a security is halted at that time. The Exchange believes that this proposed difference from the Current Auction Rules would streamline functions leading into the close. It would also permit the entry of offsetting MOC and LOC Orders during a trading halt that continues past the Closing Auction Imbalance Freeze Time if a Regulatory Closing Imbalance is disseminated.

• The Exchange believes that the proposed change that during a halt or pause in Exchange-listed securities, orders not eligible to participate in the reopening would be cancelled rather than kept on the Exchange Book, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would streamline order processing for when trading resumes in that security.

• The Exchange believes that proposed Rule 7.35C would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based in part on how the Exchange would currently facilitate an Auction if the DMM were not available, including that such auctions would continue to be subject to price limitations and not all orders would be guaranteed to participate, as provided for under the Current Auction Rules. The Exchange believes that the proposed enhancements as compared to the Current Auction Rules would promote just and equitable principles of trade because they are based in part on functionality currently available for electronic auctions on NYSE Arca and NYSE American, including pricing an auction based on an Indicative Match Price that is subject to Auction Collars. Because the Exchange calculates Auction Imbalance Information differently from NYSE Arca and NYSE American, the Exchange believes that the proposed difference from NYSE Arca and NYSE American to use the Imbalance Reference Price as the Auction Reference Price would promote consistency in how the Exchange determines whether there is an Imbalance for an Auction, regardless of whether the Auction would be facilitated by a DMM or by the Exchange. The Exchange further believes that the proposed Auction Collars would promote just and equitable principles of trade because they would only be used if the Exchange were to facilitate an Auction, which is available as a business continuity measure for the remote possibility of a DMM being unavailable. The Exchange further believes that applying extension logic for reopenings after a Trading Pause would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would align the rules of the Exchange with those of NYSE Arca and NYSE American with respect to extension logic that would be applicable for an electronic reopening auction following a Trading Pause.

Rule 7.11. The Exchange believes that the proposed amendments to Rule 7.11 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would update the rule to support the trading of Exchange-listed securities and the Exchange's role as primary listing exchange for such securities. The proposed amendments are based on the rules of NYSE Arca and NYSE American with minor differences to include NYSE rule cross references.

Rule 7.12. The Exchange believes that proposed Rule 7.12 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is substantially identical to Rule 80B. The only proposed differences from Rule 80B are the cross references to Pillar Auction Rules rather than the Current Auction Rules. The Exchange believes that using rule numbering that is aligned with the rule numbers of NYSE Arca and NYSE American would promote consistency in the rule books of affiliated exchanges, making the rules easier to navigate for common members.

Rule 7.16. The Exchange believes that the proposed amendments to Rule 7.16 would remove impediments to and perfect the mechanism of a free and open market and national market system because it would move existing Exchange text from Rule 440B to the Pillar rule governing short sales without any substantive differences. The Exchange further believes that the proposed non-substantive differences to use Pillar terminology would promote transparency in Exchange rules by using consistent terminology.

Rule 7.18. The Exchange believes that the proposed amendment to Rule 7.18 to add subparagraph (c) relating to how the Exchange would process new and existing orders listing on the Exchange during a halt or pause would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency in Exchange rules regarding processing of orders during a halt or pause. The Exchange further believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would streamline order processing during a halt or pause to cancel resting orders and reject new orders in Auction-Eligible Securities that are not eligible to participate in a Trading Halt Auction.

Rule 7.32. The Exchange believes that the proposed amendments to Rule 7.32 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would include in the Exchange's Pillar rules existing functionality relating to order entry size. The Exchange believes that the proposed non-substantive differences from Rule 1000 would promote consistency in Exchange rules by using Pillar terminology.

Rule 7.34. The Exchange believes that the proposed amendments to Rule 7.34 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to support the transition of Exchange-listed securities to Pillar. The Exchange does not propose any substantive differences, because the hours of trading Exchange-listed securities would not be changing. The Exchange further believes that the proposed amendments would promote transparency in Exchange rules by specifying the difference in hours of trading Exchange-listed securities and UTP Securities. The Exchange further believes that proposed Rule 7.34(c)(1)(D) would remove impediments to and perfect the mechanism of a free and open market and a national market system because rejecting orders in Auction-Eligible Securities that are not eligible to participate in the Core Open Auction would streamline order processing for when the Exchange transitions to continuous trading.

Preambles. The Exchange believes the proposed amendments to the preambles to current Exchange rules and new preambles would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would promote transparency in Exchange rules regarding whether a rule would be applicable to trading of securities on Pillar.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[102] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any specific competitive issues and instead supports the transition of Exchange-listed securities to the Exchange's Pillar trading platform. As described in detail above, the proposed rule changes are substantially based on how the Exchange currently functions for its Exchange-listed securities. Accordingly, to the extent that the Exchange's current market model for trading of its Exchange-listed securities, which features DMM-facilitated auctions and a parity allocation model with the DMM as an individual participant, is a competitive offering as compared to how other equity exchanges function, the proposed rule changes are designed simply to enable the Exchange to continue with this existing market model when it transitions Exchange-listed securities to the Pillar trading platform.

The Exchange further believes that the proposed substantive differences to how auctions would function on the Exchange on Pillar are not designed for competitive reasons, but rather to apply certain existing Pillar features that are already available on NYSE Arca and NYSE American to auctions on the Exchange. The Exchange believes that these features would streamline operations on the Exchange. The Exchange operates in a highly competitive environment in which its unaffiliated exchange competitors operate under common rules for the trading of securities listed on their 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.

[102] 15 U.S.C. 78f(b)(8).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2019–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–05. This file number should be included on the subject line if e-mail 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–2019–05 and should be submitted on or before March 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[103]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03467 Filed 2–27–19; 8:45 am]

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[103] 17 CFR 200.30–3(a)(12).

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 130, 171, et al.

Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act); Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 130, 171, 173, and 174

[Docket No. PHMSA–2014–0105 (HM–251B)]

RIN 2137–AF08

Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA, in consultation with the Federal Railroad Administration and pursuant to the Fixing America's Surface Transportation Act (FAST Act) of 2015, issues this final rule to revise and clarify requirements for comprehensive oil spill response plans (COSRPs) and to expand their applicability based on petroleum oil thresholds that apply to an entire train consist. Specifically, this final rule: Expands the applicability for COSRPs; modernizes the requirements for COSRPs; requires railroads to share information about high-hazard flammable train (HHFT) operations with State and tribal emergency response commissions to improve community preparedness; and incorporates by reference a voluntary standard. The amendments in this final rule will provide regulatory flexibility and improve response readiness to mitigate effects of rail accidents and incidents involving petroleum oil and HHFTs.

DATES:

Effective date: This final rule is effective as of April 1, 2019.

Voluntary compliance date: PHMSA is authorizing voluntary compliance beginning February 28, 2019.

Delayed compliance date: Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning August 27, 2019.

Incorporation by reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 1, 2019.

ADDRESSES: Information about this rulemaking (Docket Number PHMSA–2014–0105) is available at the Federal eRulemaking Portal: *http://www.regulations.gov,* or at DOT's Docket Operation Office: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexander Wolcott, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; or Mark Maday, (202) 493–0479, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms

AAR Association of American Railroads
ACP Area Contingency Plan
AFPM American Fuel & Petrochemical Manufacturers
ANPRM Advance Notice of Proposed Rulemaking
ANSI American National Standards Institute
API American Petroleum Institute
ASLRRA American Short Line and Regional Railroad Association
ASTM ASTM International
BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
COSRP Comprehensive Oil Spill Response Plan
Crude Oil Petroleum crude oil
CWA Clean Water Act (*see* Federal Water Pollution Control Act)
DHS U.S. Department of Homeland Security
DOE U.S. Department of Energy
DOI U.S. Department of the Interior
DOT U.S. Department of Transportation
E.O. Executive Order
EPA Environmental Protection Agency
EPCRA Emergency Planning and Community Right-to-Know Act
ESA Environmentally Sensitive/Significant Area
FAST Act Fixing America's Surface Transportation Act of 2015
FEMA Federal Emergency Management Agency
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
FRA Federal Railroad Administration
FRP Facility Response Plan
FRSA Federal Railroad Safety Act
FWPCA Federal Water Pollution Control Act (*see* Clean Water Act)
GIUE Government Initiated Unannounced Exercises
GRP Geographic Response Plan
HHFT High-Hazard Flammable Train
HMR Hazardous Materials Regulations (*see* 49 CFR parts 171–180)
HMT Hazardous Materials Table (*see* 49 CFR 172.101)
HMTA Hazardous Materials Transportation Act
IAFC International Association of Fire Chiefs
IBP Initial Boiling Point
ICS Incident Command System
ICP Integrated Contingency Plan
IMT Incident Management Team
LEPC Local Emergency Planning Committee
MPMS API Manual of Petroleum Measurement Standards
NASTTPO National Association of SARA Title III Program Officials
NCP National Contingency Plan
NFPA National Fire Protection Association
NIMS National Incident Management System
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990
OSC Federal On-Scene Coordinator
OSRO Oil Spill Removal Organization
OSRP Oil Spill Response Plan
PG Packing Group
PHMSA Pipeline and Hazardous Materials Safety Administration
PREP National Preparedness for Response Exercise Program
RCP Regional Contingency Plan
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RP Recommended Practice
RSPA Research and Special Programs Administration
SACP Sub-Area Contingency Plans
SERC State Emergency Response Commission
SSI Sensitive Security Information
TERC Tribal Emergency Response Commission
TRANSCAER Transportation Community Awareness and Emergency Response
TSA Transportation Security Administration
TTCI Transportation Technology Center Inc.
U.S.C. United States Code
USCG United States Coast Guard
USFA United States Fire Administration

Table of Contents

I. Executive Summary
A. Comprehensive Oil Spill Response Plans
B. HHFT Information Sharing Notification for Emergency Response Planning
C. Initial Boiling Point Test
II. Background
A. Oil Spill Response Plans
B. HHFT Information Sharing Notification for Emergency Response Planning
C. Initial Boiling Point Test
III. Recent Spill Events
IV. National Transportation Safety Board Safety Recommendations
V. Summary and Discussion of Public Comment
A. Overview of NPRM Comments
B. Summary of Oil Spill Response Plans Comments
C. Summary of HHFT Information Sharing Notification Comments (§ 174.312)
D. Summary of Initial Boiling Point Test Comments (§ 173.121)
VI. Incorporated by Reference

VII. Section-by-Section Review
VIII. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Order 12866 and DOT Regulatory Policies and Procedures
C. Executive Order 13771
D. Executive Order 13132
E. Executive Order 13175
F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures
G. Paperwork Reduction Act
H. Executive Order 13211
I. Unfunded Mandates Reform Act
J. Executive Order 13609 and International Trade Analysis
K. Environmental Assessment
L. Regulation Identifier Number (RIN)
M. Privacy Act
List of Subjects

I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA), in consultation with the Federal Railroad Administration (FRA), issues this final rule to improve oil spill response readiness and mitigate effects of rail accidents and incidents involving petroleum oil and high-hazard flammable trains (HHFTs). *See* 49 CFR 171.8 for definition. This final rule is necessary due to expansion in U.S. energy production having led to significant challenges for the country's transportation system. PHMSA is finalizing this rule in accordance with sections 7302 and 7307 of the FAST Act, Public Law 114–94, and the Consolidated Appropriations Act of 2018, division L, title I, Public Law 115–141.

On July 29, 2016, PHMSA, in consultation with FRA, published a Notice of Proposed Rulemaking (NPRM) under the same title as this final rule (81 FR 50068). The NPRM proposed regulations in three areas: Comprehensive oil spill response plans (COSRPs), HHFT information sharing, and incorporation of an initial boiling point test for determination of light hydrocarbons in stabilized petroleum crude oils. Overall, this final rule adopts the requirements proposed in the NPRM with minor changes for plain language or clarification in consideration of the comments received to the NRPM. The estimated costs and benefits for this final rule are described in Table 1 below:

TABLE 1—10 YEAR AND ANNUALIZED COSTS (IN MILLIONS) AND BENEFITS BY STAND-ALONE REGULATORY PROPOSAL

Provision	Benefits (7%)		Costs (7%)
	Qualitative	Breakeven	
Oil Spill Response Planning and Response.	• Improved Communication/Defined Command Structure may improve response. • Pre-identified Access to Equipment and Staging of Appropriate Equipment for Response Zones. • Trained Responders.	Cost-effective if this requirement reduces the consequences of oil spills by 6.7%.	10-Year: $21.4. Annualized: $3.1.
Information Sharing	• Improved Communication • Enhanced Preparedness.	Cost-effective if this requirement reduces the consequences of oil spills by 1.2%.	10-Year: $3.7. Annualized: $0.53.
IBR of ASTM D7900	• Regulatory Flexibility • Enhanced Accuracy in Packing Group Assignments.	N/A	No Cost Estimated.
Total		Cost-effective if this requirement reduces the consequences of oil spills by 7.8%.	10-Year: $25.2. Annualized: $3.6.

A. Comprehensive Oil Spill Response Plans

This final rule adopts the requirements for COSRPs as proposed in the NPRM. The COSRP requirements are promulgated under the authority of the Oil Pollution Act of 1990 (OPA 90), Public Law 101–380, which amended the Federal Water Pollution Control Act (FWPCA), also known as the Clean Water Act (CWA), at 33 U.S.C. 1321. Table 2 below summarizes the applicable statutory requirements for COSRPs, the requirements adopted in this final rule, and the differences between the requirements adopted in this final rule and the proposals of the NPRM:

TABLE 2—COSRPS

OSRP statutory requirements	HM–251B final rule COSRP requirements	HM–251B NPRM differences
33 U.S.C. 1321(j)(5)(A)(i)	*49 CFR part 130*	*49 CFR part 130*
The President shall issue regulations which require an owner or operator of a tank vessel or facility described in paragraph (j)(5)(C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.	Restructures part 130 to create subpart C for COSRPs. Responds to commenter requests to better align COSRPs with minimum requirements for other federally mandated (Oil Spill Response Plans) OSRPs, especially those for pipelines in 49 CFR part 194. Requires PHMSA to approve COSRPs.	Minimal clarification and plain language wording changes between NPRM and final rule throughout all sections in response to comments. NPRM proposed that FRA would be responsible for approving COSRPs, and final rule consolidates DOT's OSRP approval under PHMSA.
	§ 130.105	*§ 130.104 renumbered as § 130.105*

TABLE 2—COSRPS—Continued

OSRP statutory requirements	HM–251B final rule COSRP requirements	HM–251B NPRM differences
	Provides general requirements for recordkeeping, plan format, and information about response structure. Permits use of Integrated Contingency Plan (ICP) and State plans providing equivalent level of coverage.	Minimal. Clarifies COSRPs with only one response zone do not need to include separate "core plan" section. Adds greater flexibility by permitting use of State plans that provide equivalent protection.
33 U.S.C. 1321(j)(5)(C)(iv)	*§ 130.100*	*§ 130.101 renumbered as § 130.100*
An onshore facility [e.g. rolling stock][1] that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.	Expands current applicability (42,000 gallons of oil in a single package) to also include route segments which are used for: • At least 20 cars of liquid petroleum oil in a continuous block or 35 cars of liquid petroleum oil in a train consist. • For example, tank cars containing crude oil, fuel oil, petroleum distillates, diesel, or gasoline must be included when counting cars in the consist. Mixtures that do meet the criteria for Class 3 flammable or combustible material in § 173.120, or containing residue as defined in § 171.8 of subchapter C, are not required to be included when determining the number of tank cars transporting liquid petroleum oil. Examples of petroleum oils which may not meet the definition of a Class 3 flammable or combustible liquid include diluted waste water and certain mineral oils.	Minimal. Clarifies COSRP are only required for routes used to transport applicable quantities of oil.
33 U.S.C. 1321(j)(5)(D)(i)	*§§ 130.105 and 130.110*	*§ 130.103 renumbered as § 130.110*
Be consistent with the requirements of the National Contingency Plan (NCP) and Area Contingency Plans (ACP).	Requires certification that the plan is consistent with a list of specific NCP/ACP requirements for "minimum compliance" to clarify the elements of NCP/ACP applicable to rail shipments.	Minimal. Clarifies railroads are identifying Environmentally Sensitive Areas (ESAs) from existing Area or Regional Contingency Plans.
33 U.S.C. 1321(j)(5)(D)(ii)	*§§ 130.120 and 130.125*	*§§ 130.104 and 130.105 renumbered as §§ 130.120 and 130.125, respectively*
Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause.	Requires identification of Qualified Individual for each response zone in quickly accessible information summary. Requires immediate communication between Qualified Individual and appropriate Federal official and the persons providing personnel and equipment. Requires plan include a checklist of necessary notifications, contact information, and necessary information to clarify procedures.	Minimal. Clarifies that communication between Qualified Individuals and appropriate Federal officials and persons providing response personnel and equipment, must be immediate.
33 U.S.C. 1321(j)(5)(D)(iii)	*§§ 130.105 and 130.130*	*§§ 130.102 and 130.106 renumbered as §§ 130.105 and 130.130, respectively*
Identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst-case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge.	Includes the establishment of response zones, to ensure availability of personnel and equipment in different geographic route segments. Requires planning framework for response zones including ensuring resources are staged within 12 hours at any part of the applicable route Includes requirements to identify organization, personnel, equipment, and deployment location thereof capable of removal and mitigation for a worst-case discharge (WCD). Allows use of Oil Spill Removal Organization (OSRO) which has been classified by the United States Coast Guard under 33 CFR 154.1035 or 155.1035 to be used in lieu of listing personnel and equipment	Minimal. Clarifies railroads determine the boundaries of each response zone, provided resources are identified with appropriate planning framework. Clarifies use of U.S. Coast Guard (USCG) guidelines for determining and evaluating required response resources during the response in accordance with appendix C of 33 CFR part 154.
33 U.S.C. 1321(j)(5)(D)(iv)	*§ 130.135*	*§ 130.107 renumbered as § 130.135*
Describe the training	Requires certification and documentation employees have been trained in carrying out their responsibilities under the plan.	Minimal. Clarifies Incident Command System (ICS) incident commander level training is recommended best practice.

TABLE 2—COSRPS—Continued

OSRP statutory requirements	HM–251B final rule COSRP requirements	HM–251B NPRM differences
33 U.S.C. 1321(j)(5)(D)(iv)	*§ 130.140*	*§ 130.108 renumbered as § 130.140*
Describe . . . equipment testing	Requires description and certification equipment testing meets the manufacturer's minimum requirements.	Minimal. Edits section number and title.
33 U.S.C. 1321(j)(5)(D)(iv)	*§ 130.140*	*§ 130.108 renumbered as § 130.140*
Describe . . . periodic unannounced drills	Requires exercises to be equivalent to the PREP Guidelines.	Minimal. Updates USCG website address and replaces term ''drill'' with ''exercise.''
33 U.S.C. 1321(j)(5)(D)(iv)	*§ 130.130*	*§ 130.106 renumbered as § 130.130*
Describe . . . response actions of persons on the vessel or at the facility.	COSRPs describe: • Activities and responsibilities of railroad personnel prior to arrival of Qualified Individual; • Qualified Individual's responsibilities and actions; and • Procedures coordinating railroad/Qualified Individual actions with On-Scene Coordinator (OSC).	Minimal. Adds a reference to appendix C of 33 CFR part 154 to clarify the equivalent planning standards to use of OSROs classified under 33 CFR 154.1035 and 155.1035.
33 U.S.C. 1321(j)(5)(D)(v)	*§ 130.150*	*§ 130.109 renumbered as § 130.150*
Be updated periodically	Clarifies plans should be reviewed every 5 years, when significant information changes, or after a discharge requiring plan activation ocurs.	Minimal. In response to commenters, this final rule clarifies that railroads may operate for two years upon submission of response plan to PHMSA and certification of appropriate resources, for better consistency with the CWA.
33 U.S.C. 1321(j)(5)(E)	*§ 130.150*	*§ 130.111 renumbered as § 130.150*
(1) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall— (i) promptly review such response plan; (ii) require amendments to any plan that does not meet the requirements of this paragraph; (iii) approve any plan that meets the requirements of this paragraph;	Requires approval of plans by PHMSA provided minimum requirements for the plan are met.	Minimal. NPRM proposed FRA approve railroad COSRPs. Final rule consolidates DOT's approval of OSRPs under PHMSA. As with other PHMSA programs and procedures, PHMSA will continue to work with FRA for guidance on rail specific information and procedures, including shared review and enforcement. Clarifies method to submit plans in electronic format.
(2) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—	*§ 130.100* Prohibits transportation of oil subject to COSRPs unless requirements for submission, review, and approval in § 130.150 are met and the railroad is operating in compliance with the plan	*§ 130.101 moved to §§ 130.100 and 130.150* Minimal. Edits the section numbering and title for plain language.
(i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under paragraph (1), the plan has been approved by the President; and (ii) the vessel or facility is operating in compliance with the plan		

TABLE 2—COSRPS—Continued

OSRP statutory requirements	HM–251B final rule COSRP requirements	HM–251B NPRM differences
(3) Notwithstanding paragraph (1), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge.	*§ 130.100* Allows railroads to temporarily continue operating for up to 2 years while waiting for plan approval, provided the plan has been submitted to PHMSA and the railroad submits a signed certification statement of appropriate resources.	*§ 130.111 moved to § 130.100* Minimal. PHMSA receives plans. Clarifies temporary continuation are limited to 2 years per statutory language.

B. HHFT Information Sharing Notification for Emergency Response Planning

This final rule adopts the requirements for HHFT information sharing as proposed in the NPRM, with clarification for plain language and modifications in response to commenters. The information sharing notification requirements are promulgated under the authority of Federal hazardous materials transportation law (49 U.S.C. 5101–5128). Table 3 below summarizes the advanced notification information sharing requirements mandated by the Fixing America's Surface Transportation (FAST) Act of 2015 and adopted in this final rule.

TABLE 3—INFORMATION SHARING NOTIFICATION FOR EMERGENCY RESPONSE PLANNING

Topic	FAST Act (advanced notification) Section 7302(a)(3), (4), (6)	Final rule HM–251B (information sharing) 49 CFR 174.312
Who is subject?	Class I railroads transporting HHFT (20 cars in a block, 35 in consist carrying ANY Class 3 flammable liquid).	All railroads transporting HHFT (20 cars in a block, 35 in consist carrying ANY Class 3 flammable liquid).
Who must the railroads notify?	Railroads must notify State Emergency Response Commissions (SERCs), who must provide the notification information (and updates) to any political subdivision of a State or public agency responsible for emergency response or law enforcement, upon request of the political subdivision or public agency.	Railroads must notify SERCs, Tribal Emergency Response Commissions (TERCs), or other appropriate State designated entities who share information with appropriate local authorities, upon their request.
What security measures are required?	Required security and confidentiality protections include protections from the public release of proprietary information or security-sensitive information, to prevent the release to unauthorized persons.	If the disclosure includes information that railroads believe is security sensitive or proprietary and exempt from public disclosure, the railroads should indicate that in the notification.
What to include in the notification?	A reasonable estimate of the number of implicated trains that are expected to travel, per week, through each county within the applicable state.	A reasonable estimate of the number of HHFTs that are expected to travel, per week, through each county within the state.
	Identification of the routes over which such liquid will be transported.	The routes over which the affected trains will be transported.
	Identification and a description of the Class 3 flammable liquid being transported on such trains and applicable emergency response information, as required by regulation.	A description of the materials shipped and applicable emergency response information required by subparts C and G of part 172 of this subchapter.
	A point of contact at the Class I railroad responsible for serving as the point of contact for State emergency response centers and local emergency responders related to the Class I railroad's transportation of such liquid.	At least one point of contact at the railroad (including name or email address, title, phone number, and address) for the SERC, TERC, and relevant emergency responders related to the railroad's transportation of affected trains.
When/how often?	Update the notifications prior to making any material changes to any volumes or frequencies of HHFTs traveling through a county. 'Material changes' in Emergency Order means changes greater than 25%.	Updates the notification for changes in volume greater than 25 percent.
How are records maintained?	Requires notification "consistent with the notification content requirements in Emergency Order Docket No. DOT–OST–2014–0067".	Notification may be provided electronically or in writing. Railroads provide the notification to DOT upon request.

[1] "Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land. 33 U.S.C. 1321(a)(10).

TABLE 3—INFORMATION SHARING NOTIFICATION FOR EMERGENCY RESPONSE PLANNING—Continued

Topic	FAST Act (advanced notification) Section 7302(a)(3), (4), (6)	Final rule HM–251B (information sharing) 49 CFR 174.312
What COSRP Information must be included?	N/A	For petroleum oil trains subject to the COSRP in part 130, includes the contact information for Qualified Individual and the response zone description from the COSRP.

C. Initial Boiling Point Test

The NPRM proposed to incorporate by reference ASTM International's (ASTM) D7900, ''Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography'' related to initial boiling point for crude oils containing light hydrocarbons as an acceptable testing alternative to the boiling point tests specified in the current regulations. This ASTM standard is referenced by the industry best practice, American National Standards Institute (ANSI)/American Petroleum Institute (API) Recommended Practices 3000, ''Classifying and Loading of Crude Oil into Rail Tank Cars,'' First Edition, September 2014.

This final rule incorporates the test method by reference as proposed under the authority of Federal hazardous materials transportation law (49 U.S.C. 5101–5128). This final rule clarifies that initial boiling point, when determining the boiling distribution using ASTM D7900, is the temperature at which 0.5 weight percent is eluted. Inclusion of this additional boiling test option provides regulatory flexibility and promotes enhanced safety in transport through accurate Packing Group (PG) assignment.

II. Background

Expansion in U.S. energy production has led to significant challenges for the country's transportation system. Traditionally, pipelines and oceangoing tankers have delivered most crude oil to U.S. refineries, accounting for approximately 93 percent of total receipts (in barrels) in 2012.[2] Although other modes of transportation—rail, barge, and truck—have accounted for a relatively minor portion of crude oil shipments historically, volumes have risen rapidly in the 2010s relative to previous decades.[3] The rail transportation of large volumes of crude oil and other petroleum products presents unique safety risks. Rail accidents have tracked changes in production and rail shipments of crude oil— rising when rail shipments increase in volume and falling when crude oil volumes fall according to FRA and PHMSA incident report data. Please see the RIA for further discussion and a graph of oil-by-rail shipments and derailments. This final rule will improve response readiness and mitigate effects of rail accidents and incidents by instituting information sharing requirements for HHFTs and COSRP requirements for petroleum oil trains.

DOT reached out to stakeholders in industry, emergency response, and State and tribal governments through various forums and events to better understand and increase community awareness and preparedness for response to bulk transportation incidents involving energy products. In May 2014, PHMSA published the ''Crude Oil Rail Emergency Response Lessons Learned Roundtable Report,'' which outlined key factors that were identified by a panel of fire chiefs and emergency response management officials as having a direct impact on success in managing the outcomes of a crude oil transportation incident.[4] More information about DOT's actions related to community awareness of and preparedness for response to bulk transportation incidents involving energy products is available on PHMSA's ''Safe Transportation of Energy Products'' website.[5]

A. Oil Spill Response Plans

The Oil Pollution Act of 1990 (OPA 90) amended the Federal Water Pollution Control Act (FWPCA), also known as the Clean Water Act (CWA), at 33 U.S.C. 1321 by adding oil spill response planning requirements for ''facilities'' that handle oil. Railroads or ''rolling stock'' are included in the definition of ''onshore facility.''[6] The CWA requires owners and operators of onshore facilities to prepare and submit Oil Spill Response Plans (ORSPs) for facilities that ''could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.'' The CWA directs the President to issue regulations requiring owners and operators of onshore oil facilities to develop, submit, update and in some cases obtain approval of OSRPs meeting certain minimum requirements in 33 U.S.C. 1321(j)(5).

On October 22, 1991, the President delegated authority to the Secretary of Transportation to regulate certain transportation-related facilities (*i.e.,* motor carriers and railroads) under sections 1321(j)(1)(C) and 1321(j)(5) of the CWA. *See* E.O. 12777, 56 FR 54757, sections 2(b)(2) and 2(d)(2). The Secretary later delegated this authority to PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA). PHMSA's delegated authority under sections 1321(j)(1)(C) and 1321(j)(5) for certain transportation-related facilities (*i.e.,* motor vehicles and rolling stock) is solely the authority to promulgate regulations. When required, COSRPs are submitted to the Federal Highway Administration or the FRA, for motor carriers and railroads, respectively.

On June 17, 1996, RSPA published a final rule carrying out its delegated authority under the CWA for motor carriers and railroads.[7] The 1996 final rule established ''comprehensive plans'' under the authority of 33 U.S.C. 1321(j)(5) for anyone transporting oil in a quantity greater than 1,000 barrels or 42,000 gallons per package. The 1996 final rule also adopted requirements in part 130 for the preparation of ''basic plans'' for containers with a capacity of

[2] Bureau of Transportation Statistics, ''Crude Oil and Petroleum Products Transported in the United States by Mode.'' U.S. Department of Transportation. Last modified 01/2018. *https://www.bts.gov/content/crude-oil-and-petroleum-products-transported-united-states-mode.*

[3] U.S Energy Information Administration. ''Petroleum and Other Liquids.'' Independent Statistics and Analysis. Last modified 08/2018. *https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=ESM_EPC0_RAIL_ZAMN-ZAMN_MBBL&f=M.*

[4] *https://www.phmsa.dot.gov/safe-transportation-energy-products/emergency-response-and-training.*

[5] *https://www.phmsa.dot.gov/safe-transportation-energy-products/safe-transportation-energy-products-overview.*

[6] ''Onshore facility'' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.'' 33 U.S.C. 1321(a)(10). ''Rolling stock'' refers to rail cars.

[7] 61 FR 30533 (June 17, 1996).

3,500 gallons or more carrying petroleum oil. Basic plans were adopted as a ''containment rule pursuant to § 1321(j)(1)(C)'' of the CWA and therefore do not meet the minimum requirements for OSRPs in section 1321(j)(5).[8]

A rail tank car designed to carry liquid materials, including petroleum oil, has an approximate capacity of 30,000 gallons. Because the typical rail tank car has a capacity around 30,000 gallons, no rail carriers are currently transporting tank cars of petroleum oil subject to the 42,000-gallon packaging threshold for COSRPs adopted by the 1996 final rule. On July 6, 2013, an unattended, runaway unit train carrying crude oil from the Bakken region of North Dakota derailed in the town of Lac-Mégantic, Quebec. The incident resulted in loss of life and destruction of property and the environment. The cause was found to be human error that led to the unattended train gathering speed before derailing near the center of Lac-Mégantic. While an OSRP may not have prevented this incident, the Lac-Mégantic incident prompted examination into the safety of crude oil transportation by rail. The National Transportation Safety Board (NTSB) recommended requiring COSRPs for unit trains of petroleum in Safety Recommendation R–14–005. Congress also directed DOT to develop and report on a plan to finalize updated requirements for OSRPs in section 7307 of the FAST Act. Additionally, in the Consolidated Appropriations Act of 2018, signed into law on March 23, 2018, Congress directed the Secretary to ''issue a final rule to expand the applicability of comprehensive oil spill response plans.''

On July 29, 2016, PHMSA, in consultation with FRA, published an NPRM titled ''Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains.'' The NPRM proposed to modernize COSRP requirements under 49 CFR part 130 in response to NTSB recommendations (including Safety Recommendation R–14–005), the FAST Act, and comments from the public to an August 1, 2014, Advance Notice of Proposed Rulemaking (ANPRM) (79 FR 45079). PHMSA also proposed the requirements to address needs identified by first responders in the ''Crude Oil Rail Emergency Response Lessons Learned Roundtable Report'' and challenges identified through analysis of recent spill events.[9]

Specifically, the NPRM proposed to expand COSRPs to routes over which railroads operate a single train containing 20 or more tank cars loaded with liquid petroleum oil in a continuous block or a single train containing 35 or more tanks cars loaded with liquid petroleum oil throughout the train consist.

The NPRM also proposed to update the COSRP requirements in response to comments requesting greater specificity to plan contents through a closer alignment to other Federal OSRP regulations promulgated under the CWA. The proposed requirements in the NPRM are similar to PHMSA's Office of Pipeline Safety's (OPS) requirements for pipeline oil spill response plans in 49 CFR part 194. Developing OSRPs for both pipeline and rail require planning for routes spanning large geographic areas. The NPRM proposed railroads divide their routes into ''response zones'' that connect notification procedures and available response resources to the specific geographic area for the covered route segments. Response zones include geographic information, such as a planning framework, which ensures response resources are staged within 12 hours of any point along the route. The NPRM requested comments on providing regulatory flexibility for small businesses, requiring faster response times in certain ''High Volume Areas,'' and recommending that the Qualified Individual should be trained to the Incident Commander level using the Incident Command System (ICS).

B. HHFT Information Sharing Notification for Emergency Response Planning

Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes the Secretary to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary delegates this authority to PHMSA under 49 CFR 1.97(b). PHMSA is responsible for overseeing a hazardous materials safety program that minimizes the risks to life and property inherent in the transportation of hazardous materials in commerce. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include operational requirements applicable to transportation of hazardous materials by highway, rail, aircraft, and vessel. The Secretary also has authority over all areas of railroad transportation safety (Federal railroad safety laws, principally 49 U.S.C. chapters 201–213); this authority is delegated to FRA under 49 CFR 1.89. FRA promulgates and enforces a comprehensive regulatory program (49 CFR parts 200–244) and inspects and audits railroads, tank car facilities, and hazardous material offerors for compliance with both FRA's regulations and the HMR. Because of the shared role in the safe and secure transportation of hazardous materials by rail, PHMSA and FRA work closely when considering regulatory changes. The agencies take a system-wide, comprehensive approach consistent with the risks posed by the bulk transport of hazardous materials by rail.

On May 7, 2014, the Secretary, under the authority of 49 U.S.C. 5121(d), issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067 (Order).[10] The Order requires each railroad transporting 1 million gallons or more of Bakken crude oil in a single train in commerce within the United States to provide certain information in writing to the State Emergency Response Commission (SERC) for each state in which it operates such a train. Tribal Emergency Response Commissions (TERCs) are permitted to coordinate with the appropriate SERC(s) for access to data supplied under this Emergency Restriction/Prohibition Order.[11] The Order also requires a railroad to provide SERCs information about the type of oil, volume, route, and emergency response procedures, as well as appropriate railroad contact information. It also requires railroads to provide SERCs updated notifications prior to any ''material change'' in the volume of affected trains and provide copies of notifications made to each SERC to FRA upon request. DOT subsequently issued a document compiling frequently asked questions (FAQs) to clarify several aspects of the Order.[12]

On October 3, 2014, FRA published ''Proposed Agency Information Collection Activities; Notice and Request for Comments'' (79 FR 59891) to provide additional analysis of the requirements of the Order. FRA consulted with DOT, the U.S. Department of Homeland Security (DHS), and the Transportation Security Administration (TSA), and determined the information required by the Order was not commercially sensitive or Sensitive Security Information (SSI) as defined by DOT, DHS, or TSA regulations. *Id.* at 59892. FRA further noted that DOT found no basis to

[8] 61 FR 30537 (June 17, 1996).

[9] *https://www.phmsa.dot.gov/safe-transportation-energy-products/emergency-response-and-training.*

[10] *https://www.regulations.gov/document?D=DOT-OST-2014-0067-0001.*

[11] *https://www.regulations.gov/document?D=DOT-OST-2014-0067-0003.*

[12] *See* document number 0003 in Docket No. DOT–OST–2014–0067.

conclude that the public disclosure of the information is detrimental to transportation safety.

In the May 8, 2015, final rule ''Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains'' (HM–251 final rule), PHMSA decided against adopting an earlier proposal to codify the specific requirements of the Order for railroads transporting 1 million gallons or more of crude oil originating in the Bakken region, and instead adopted similar requirements more easily integrated into the HMR that achieved the desired result.

On May 28, 2015, PHMSA announced plans to extend the Order indefinitely and to consider options for codifying the disclosure requirement on a permanent basis after further evaluating the issue within DOT.[13] PHMSA recognized the desire for local communities to receive proactive notification of hazardous materials moving through their cities and towns. PHMSA noted that transparency is critical to DOT's comprehensive approach to safety and expressed support for the public disclosure of this information to the extent allowed by applicable State, local, and tribal laws.

On December 4, 2015, the FAST Act was signed into law. The FAST Act includes the ''Hazardous Materials Transportation Safety Improvement Act of 2015'' at sections 7001 through 7311, which provides direction for the hazardous materials safety program. Section 7302 directs the Secretary to issue regulations to require (1) real-time sharing of the electronic train consist information for hazardous materials shipments; and (2) advanced notification of HHFTs. DOT has initiated a separate rulemaking to address the requirements of section 7302(a)(1) related to real-time electronic train consists. Docket No. PHMSA–2016–0015 (HM–263).[14]

Section 7302(a)(3) of the FAST Act directs DOT to promulgate regulations requiring advanced notification consistent with notification content requirements of the Order. The FAST Act expands the Order to require Class I railroads to provide advanced notification and information on HHFTs to each SERC. The FAST Act requires SERCs receiving this advanced notification to provide the information to law enforcement and emergency response agencies upon request. The FAST Act, in section 7302(a)(6), also directs the Secretary to establish security and confidentiality protections for electronic train consist information and advanced notification information.

In response to the FAST Act and DOT's commitment to codifying the Order, PHMSA proposed information sharing notification requirements in the ''Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (HM–251B)'' NPRM published July 29, 2016. The NPRM proposed that all railroads transporting HHFTs notify SERCs, Tribal Emergency Response Commissions (TERCs), or other State-delegated agencies with information consistent with the Order. The NPRM proposed that the notification include key information from COSRPs, when applicable.

The intent of these requirements is to ensure that local emergency responders and emergency response planning officials have access to sufficient information regarding the movement of HHFTs in their jurisdictions to adequately plan and prepare for emergency events involving HHFTs. This purpose is reaffirmed by the FAST Act's requirements for sharing and protection of information required by the advanced notification. Under the Emergency Planning and Community Right-to-Know Act (EPCRA) in title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), the Governor of each state is required to establish a SERC. The SERC is responsible for establishing emergency planning districts and appointing, supervising, and coordinating Local Emergency Planning Committees (LEPCs). For federally recognized tribal governments, the Chief Executive Officer of the Tribe appoints a Tribal Emergency Response Commission (TERC), as designated by the Environmental Protection Agency (EPA) in a final rule published July 26, 1990 (55 FR 30632). TERCs have the same responsibilities as SERCs. On July 26, 1990, EPA published a final rule designating Indian Tribes and their chief executive officers as the implementing authorities for EPCRA on all Indian lands.

The NPRM proposed to protect information by allowing railroads to indicate information they ''believe is security sensitive or proprietary and exempt from public disclosure.'' Previous analysis by DOT, FRA, and DHS concluded that the aggregated information required to be shared by railroads does not qualify for withholding under Federal standards for business confidential information or SSI; however, as noted in FRA's previous discussion of this matter in its October 2014 Information Disclosure Notice, State laws control, and may limit, the disclosure and dissemination of this information.[15] Therefore, the NPRM acknowledged that states may differ in their methods and proposed an approach intended to provide flexibility for SERCs, TERCs, and other State-delegated agencies to disseminate information in accordance with state laws and procedures. As proposed, before fulfilling a request for information and releasing the information, the States and Tribes will be on notice of which information the railroads consider to be inappropriate for public release.

C. Initial Boiling Point Test

The offeror's responsibility to classify and describe a hazardous material is a key requirement under the HMR. Improper classification and failure to identify applicable material properties can have significant negative impacts on transportation safety. Proper classification is necessary to ensure proper packaging, operational controls, and hazard communication requirements are met, all of which are important to mitigate the negative effects of a train derailment or other hazardous materials incident. It is an offeror's responsibility to accurately classify and describe a hazardous material. For transportation purposes, classification is ensuring the proper hazard class, packing group, and shipping name are assigned to a material. To determine whether a hazardous material should be classified as Class 3 Flammable liquid, as well as determine the appropriate packing group, the HMR require testing for the material's flash point and initial boiling point (IBP) under §§ 173.120 and 173.121.

The American National Standards Institute (ANSI) recognized recommended practice includes guidance on the material characterization, transport classification, and quantity measurement for overfill prevention of petroleum crude oil for the loading of rail tank cars (*see* API RP 3000, ''Classifying and Loading of Crude Oil into Rail Tank Cars''). For crude oils containing volatile, low molecular weight components (*e.g.,* light ends), the industry recommended best practice for IBP is to test using ASTM D7900. The initial boiling point, when determining the boiling distribution using ASTM D7900, is the temperature at which 0.5

[13] *https://www.phmsa.dot.gov/news/phmsa-notice-regarding-emergency-response-notifications-shipments-petroleum-crude-oil-rail.*

[14] *https://www.regulations.gov/docket?D=PHMSA-2016-0015.*

[15] 79 FR 59892 (June 30, 2014).

weight percent is eluted. The ASTM D7900 differs from the boiling point tests currently in the HMR in that it is the only test that ensures a minimal loss of light ends; however, the ASTM D7900 is not currently included in the list of testing methods authorized in the HMR in § 173.121(a)(2).

In this final rule, PHMSA is adopting the NPRM's proposal to incorporate by reference the ASTM D7900 test method identified within API RP 3000, thus permitting use of this IBP industry best practice. The incorporation of the ASTM D7900, which aligns with the API RP 3000, will not replace the currently authorized initial boiling point testing methods. Rather, it will serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate packing group assignment.

III. Recent Spill Events

PHMSA collected and reviewed information from various sources pertaining to recent derailments involving discharges of petroleum oil. In this rulemaking and the accompanying analysis, PHMSA has focused on the following derailments: Mosier, OR (June 2016); Watertown, WI (November 2015); Culbertson, MT (July 2015); Heimdal, ND (May 2015); Galena, IL (March 2015); Mt. Carbon, WV (February 2015); La Salle, CO (May 2014); Lynchburg, VA (April 2014); Vandergrift, PA (February 2014); New Augusta, MS (January 2014); Casselton, ND (December 2013); Aliceville, AL (November 2013); and Parkers Prairie, MN (March 2013). In the Regulatory Impact Analysis (RIA), PHMSA provides narratives and discussion of the circumstances and consequences of these derailments. Please refer to the rulemaking docket (Docket No. PHMSA–2014–0105) for the preliminary and final RIA and all supporting documents.

PHMSA's review of these derailments identified challenges during oil spill response that occurred in the past and could potentially occur in future derailment scenarios. PHMSA incorporates this understanding of response challenges into this rulemaking, which amends the requirements of 49 CFR part 130, to improve COSRPs by way of new and revised requirements. Improved oil spill response planning will, in turn, improve the actual response to future derailments involving petroleum oil and lessen potential negative effects on communities.

IV. National Transportation Safety Board Safety Recommendations

This rulemaking partially addresses several recommendations from the NTSB, as summarized in Table 4:

TABLE 4—NTSB RECOMMENDATIONS PARTIALLY ADDRESSED IN THIS RULEMAKING

NTSB recommendation	Recommendation summary	Rulemaking description
R–14–002: Issued January 23, 2014.	Recommends that FRA develop a program to audit response plans for rail carriers of petroleum products to ensure that adequate provisions are in place to respond to and remove a worst-case discharge to the maximum extent practicable and to mitigate or prevent a substantial threat of a worst-case discharge.	Requires PHMSA to approve COSRPs for rail.
R–14–005: Issued January 23, 2014.	Recommends that PHMSA revise the spill response planning thresholds contained in 49 CFR part 130 to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products.	Revises the spill planning thresholds to address 20 cars of liquid petroleum oil in a continuous block or 35 cars of liquid petroleum oil in a consist.
R–14–014: Issued August 22, 2014.	Recommends that PHMSA require railroads transporting hazardous materials through communities to provide emergency responders and local and state emergency planning committees with current commodity flow data and assist with the development of emergency operations and response plans.	Adopts information sharing requirements for HHFTs.
R–14–006: Issued January 23, 2014.	Recommends that PHMSA require shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and recordkeeping of products offered in transportation.	Adds ASTM D7900 test method as option to determine boiling point of certain crude oil.

V. Summary and Discussion of Public Comment

A. Overview of NPRM Comments

In the NPRM, PHMSA solicited public comment on potential revisions to regulations that would: Expand the applicability of COSRPs to HHFTs based on the amount of petroleum oil in an entire train consist, rather than a single package or tank car; require rail carriers to share information regarding HHFTs with State authorities; and incorporate by reference of the ASTM D7900 test method. The NPRM summarized and discussed comments received in response to questions regarding potential revisions to the COSRP requirements asked by the earlier ANPRM. PHMSA received approximately 130 comments in response to the NPRM. See Table 5 describing commenter backgrounds:

TABLE 5—COMMENTER BACKGROUND

Commenter background	Count	Description and examples of category
Non-Government Organizations	35	Environmental groups (30), emergency response organizations (4), and other non-governmental organizations (1).
Governments	19	Local (8), State (9), Federal (2).
Private Individuals	67	Members of the public.
Carrier Industry Stakeholders	6	Railroads (1) and related trade associations (5).
Shipper Industry Stakeholders	4	Shippers (2) and petroleum-related trade associations (2).

Most commenters addressed proposed COSRP requirements. COSRP-related comments comprised four general categories: (1) Reiterating comments provided to the ANPRM; (2) providing statements of general support for expanding COSRP requirements; (3) expressing general concern or requests to require faster response times for response zones; or (4) recommending additional requirements not proposed by the NPRM. Many commenters noted the negative impact that a petroleum oil spill or HHFT derailment would have on their individual communities and personal property, with most such comments coming from residents of the Hudson River Valley region. A few commenters provided detailed comments about specific proposals in the NPRM for COSRPs. Comments related to COSRPs are further discussed in ''Section V.B. Summary of Oil Spill Response Plan Comments'' of this final rule.

PHMSA received approximately 20 comments on the proposed HHFT information sharing notification requirements. These comments fall into several categories, including: (1) Applicability; (2) notification recipients; (3) frequency of notification; and (4) information security and confidentiality concerns. Comments related to HHFT information sharing are further discussed in ''Section V.C. Summary of HHFT Information Sharing Notification Comments'' of this final rule.

PHMSA received five comments addressing the proposed incorporation by reference of the ASTM D7900 test method. Comments related to incorporation by reference are further addressed in ''Section V.D. Summary of Initial Boiling Point Comments'' of this final rule.

Additionally, PHMSA received several miscellaneous comments that voiced general concern about the public health, safety, and/or environmental risks of petroleum trains and/or fossil fuels. These comments either did not provide recommendations for regulatory action or exceeded the scope of PHMSA's authority.

B. Summary of Oil Spill Response Plans Comments

Summary and Response to Basic Spill Response Plan (§ 130.31) Comments

The current threshold for a basic OSRP is 3,500 gallons of petroleum oil. Several commenters suggested that basic plans for packages exceeding this threshold should be eliminated and replaced with comprehensive oil spill response plans, which would effectively require a COSRP for all tank-car shipments of petroleum oil. Commenters suggested basic OSRPs be replaced because they do not meet the minimum requirements of the CWA in 33 U.S.C. 1321(j)(5)(D). The State of California Department of Fish and Wildlife, for example, disagreed that basic OSRPs could be issued under a containment rule pursuant to section 1321(j)(1)(C).

The NPRM did not propose changes to the requirements for basic OSRPs; therefore, this rule does not make such changes. As stated in the NPRM and the initiating 1996 final rule, the requirements for a basic OSRP were issued as a ''containment rule pursuant to § 1321(j)(1)(C)'' of the CWA, and therefore were not intended to fulfill the requirements of 33 U.S.C. 1321(j)(5)(D). The requirements of 33 U.S.C. 1321(j)(5)(D) for OSRPs are promulgated in the requirements for COSRPs.

Summary of Comments Regarding Applicability of COSRP (§ 130.100)

The NPRM proposed to expand the applicability for COSRPs so that any railroad that transports a single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist must also have a current, written COSRP. The NPRM provided an exception for tank cars carrying residue as defined in § 171.8 of subchapter C or diluted mixtures that do not meet the definition of a Class 3 flammable or combustible liquid. The NPRM maintained both the current exception in part 130 for mixtures that contain less than 10 percent oil by volume and the current threshold of 42,000 gallons per package for both petroleum oil and non-petroleum oil.

PHMSA received approximately 20 comments to the NPRM pertaining to the applicability of COSRPs. Most of these comments fell into two major categories: The volume of oil being transported and the type of materials that trigger COSRPs. Additionally, there were a few comments pertaining to applicability in response to a question in the NPRM that asked whether additional relief should be given to small entities, such as Class II or III railroads.

While some commenters supported the proposed volume applicability threshold, many commenters provided alternative suggestions. Most comments reiterated suggestions regarding applicability provided in comments responding to the ANPRM. Generally, individuals and environmental organizations recommended using lower thresholds of petroleum oil to trigger COSRPs due to environmental concerns, safety concerns, or interpretations that the CWA requires oil spill response plans for all rolling stock carrying oil. Several commenters requested lower applicability thresholds without specifying an alternative number.[16] Lower-volume thresholds proposed by commenters ranged from any amount of oil to 20 rail cars of oil. Commenters suggested replacing basic plans with COSRPs for packages exceeding 3,500 gallons. Commenters who suggested a threshold of one tank car—approximately 29,000 gallons—believed that any rail line carrying an oil tank car should be subject to COSRPs. Commenters that suggested a two-tank car threshold did so to maintain consistency with the current requirement of 42,000 gallons in one tank car, but suggested changing the language to require COSRPs when a train is carrying 42,000 gallons of oil in any form, not just one tank car. It was also suggested that the 42,000-gallon threshold be removed outright. The Minnesota Pollution Control Agency stated that the threshold is not meaningful and seems ''arbitrary and outdated especially when you consider two 30,000-gallon tank cars pose the same or more risk and are not regulated.''

In addition to quantitative applicability comments, PHMSA received several qualitative applicability comments about the type of oil that should require a COSRP. Most of these comments were from environmental groups or private citizens and reiterated comments provided in response to the ANPRM, without providing additional data. Suggestions for expanded applicability of COSRPs included all hazardous substances, all Class 3 flammable liquids or other hazardous materials, all kinds of oil, or all kinds of liquid petroleum oils (irrespective of hazard class). Mandating COSRPs for all hazardous substances was suggested by state agencies and environmental groups, who cited the CWA statute requirements for hazardous substances, in addition to oil spills per 33 U.S.C. 1321(j)(5). These commenters supported using the Federal On-Scene Coordinator (OSC) to identify concerns evaluating a plan's compliance with the statutory and regulatory requirements and expressed concern about the potential harm from hazardous substances. In addition, commenters cited some state

[16] See PHMSA–2014–0105–0250, PHMSA–2014–0105–0251, PHMSA–2014–0105–0252, PHMSA–2014–0105–0253, PHMSA–2014–0105–0256, PHMSA–2014–0105–0290.

plans, such as Minnesota's, in which COSRPs are required for all hazardous substances. Multiple commenters suggested adding all Class 3 flammable liquids to the materials requiring a COSRP, with justifications mostly based on environmental or safety concerns. Commenters also cited ethanol as an example of a Class 3 flammable material that poses a risk by rail.

NTSB opposed the exception from the COSRP requirements for unit trains carrying ''mixtures or solutions of petroleum oil not meeting the criteria for Class 3 flammable or combustible material.'' NTSB found use of the term ''mixtures or solutions'' confusing, as petroleum products are inherently a mixture. NTSB also stated:

> [S]pilled, petroleum products are significant environmental pollutants, whether or not they are Class 3 flammable or combustible liquids. In fact, less-flammable petroleum materials that are denser than water may sink to form emulsions, adhere to sediments, and produce tar balls that are often more difficult to remove from waterways than less viscous Class 3 flammable oils.

The Association of American Railroads (AAR) provided comments related to the identification of petroleum oil subject to the plan. AAR requested that PHMSA specify which UN or NA identification numbers are associated with the definition of petroleum oil. AAR suggested requiring railroads to determine which UN or NA numbers associated with Class 3 materials further meet the definition of petroleum oil and create an additional burden on railroads.

AAR provided comments about the applicability of route segments in the plans and requested clarification that the COSRP requirements do not apply to route segments where applicable quantities of oil are not transported. AAR also suggested ''that plans should be required for only portions of HHFT routes situated within a half-mile (0.5 miles) of a navigable waterway'' so that railroads do not need to perform their own environmental reviews throughout the entire rail network, which would be overly burdensome. In addition, AAR stated that the use of a half-mile standard for planning purposes is consistent with existing standardized planning distances found in 40 CFR part 112, appendix C, section 5.

The International Association of Fire Chiefs (IAFC) suggested revising the applicability proposed in § 130.101 (''Any railroad which transports a single train transporting . . .''), so as to replace ''transports'' with ''operates'' for ''better flow.''

In the NPRM, PHMSA asked whether regulatory relief may be appropriate for certain small businesses (*i.e.,* Class II and III short lines). Most commenters supported regulations based on the risk, quantity, and type of oil, regardless of business size. The State of California Department of Fish and Wildlife expressed concern that the threshold of 20 tank cars in a unit or 35 tank cars across the consist would exempt too many short lines from COSRPs. The American Short Line and Regional Railroad Association (ASLRRA) submitted comments stating that many Class II and III short lines only operate the first or last mile of an applicable route and that requiring them to create plans would be an undue burden. ASLRRA also described scenarios in which the short line acts as a tenant on track owned by a Class I railroad, suggesting that Class III railroads should be offered some level of relief if voluntarily entering into agreement to use a plan created by the Class I for the route section used by both railroads. ASLRRA further clarified:

> [This is not to] suggest the host railroad's oil spill response plan should address the tenant's operations as a matter of regulatory fiat. Rather, ASLRRA is asking PHMSA to acknowledge that it is permissible for a tenant railroad to contract with a host railroad for the latter to supply the oil spill response capability required by PHMSA.

Response to Comments Regarding Applicability of COSRP (§ 130.100)

PHMSA initiated this rulemaking in response to changing conditions stemming from the increase in the volume of petroleum oil transported by rail and the consequent incidents and accidents; however, pursuant to the CWA requirement for rolling stock that ''could reasonably be expected to cause substantial harm,'' PHMSA seeks to minimize burdens by expanding requirements for COSRPs only where there is a demonstrated need. PHMSA does not have evidence of rail incidents involving unit trains carrying other non-petroleum oils (as defined in 49 CFR 130.5) that have demonstrated a need to expand the applicability of comprehensive plans to other non-petroleum oils. Commenters did not provide additional data on rail transportation of non-petroleum oil or hazardous substances identifying new conditions, nor did they identify rail incidents indicating new risks posed by other non-petroleum oils or hazardous substances. Therefore, we are continuing with a threshold of 42,000 gallons for tank cars carrying petroleum or other non-petroleum oil. However, we may consider revising the requirements for other non-petroleum oils or hazardous substances in a future rulemaking.

We disagree that the applicability should be expanded to include additional hazardous materials, such as all Class 3 flammable or combustible liquids. Commenters did not provide adequate data indicating that the type of planning and level of resources required by this rulemaking would be appropriate for cleaning up spills for materials other than oils. Furthermore, this rulemaking was promulgated to respond directly to the risks and unique response requirements related to the large volumes of petroleum oil being transported in unit trains.

PHMSA disagrees that COSRPs would be appropriate for a lower volume of petroleum oil or a lesser number of tank cars. As discussed in the NPRM and HM–251 final rule, modeling data from FRA indicates that for trains with fewer than 20 tank cars in a block, or fewer than 35 tank cars dispersed throughout a train, relatively few tank cars containing petroleum oil would be breached on average in the event of an incident.[17] The threshold of 20 cars in a block as used in the HM–251 rulemaking comes from AAR's Circular OT–55, which provides ''Recommended Railroad Operating Practices for Transportation of Hazardous Materials'' and defines ''key trains.'' Then, FRA performed an analysis to determine the average number of cars that would derail with 20 tank cars in a block. Once that number was determined, FRA did further analysis to determine at what number of tank cars dispersed throughout the consist would the number of tanks cars derailed be equivalent. The result was 35 tank cars throughout the consist. Therefore, in a derailment scenario, these lower-risk train configurations (*i.e.,* fewer than 20 tank cars in a block or 35 tank cars throughout the train) are not ''reasonably expected'' to breach in a manner that could ''cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.'' Furthermore, given the enhanced tank car standards promulgated in the HM–251 final rule and resulting improvements in tank-car integrity, PHMSA believes the likelihood of a tank car releasing its total contents in a derailment has been significantly reduced.[18] PHMSA maintains that lower-risk train configurations should not be the focus of this rulemaking because extending

[17] 80 FR 26665 (May 8, 2015).

[18] 80 FR 26665 (May 8, 2015).

the requirements of this rule to operators of lower-risk configurations would be burdensome, costly, and inefficient.

PHMSA did not propose changes to the communication requirements in 49 CFR 130.11, which apply to both basic and comprehensive plans. Basic plans already require that shipments of tank cars carrying petroleum oil be described on shipping papers or similar documents as containing oil, unless they are identified as ''aviation fuel, diesel fuel, fuel oil, gasoline, jet fuel, kerosene, motor fuel, or petroleum.'' While basic plans will be replaced with COSRPs for certain train configurations, the responsibility for offerors to identify oil will not change. Additionally, the U.S. Coast Guard (USCG) maintains a ''List of Petroleum and Non-Petroleum Oils'' as a guide to determining whether a particular substance is an oil under their regulations.[19] Therefore, PHMSA further disagrees that additional guidance is necessary to identify petroleum oil, and is adopting the definition of petroleum oil as proposed.

The definition of petroleum oil in § 130.5 includes both refined and unrefined petroleum products. Oils which do not contain petroleum, such as synthetic oils or essential oils, continue to be defined as ''non-petroleum oil'' in § 130.5. We are maintaining PHMSA's longstanding provision that any ''mixture or solution in which oil is in a concentration by weight of less than 10 percent'' is excluded from the requirements in part 130. Therefore, petroleum oil in part 130 includes mixtures containing at least 10 percent petroleum oil, such as denatured ethanol fuel E85 (ethanol containing 15 percent gasoline); however, mixtures containing less than 10 percent petroleum oil, such as diluted waste water or E95 (ethanol with 5 percent gasoline) continue to be excluded.

We also disagree with NTSB that the exception for unit trains not carrying petroleum oil meeting the definition of a Class 3 flammable liquid or combustible liquid should be removed. Providing this exception aligns this rulemaking's applicability to unit trains with the subset of HHFTs carrying petroleum oil covered in other PHMSA rulemakings. Furthermore, the railroad can leverage information from the routing analysis required by 49 CFR 172.820 when developing plans.

We agree with AAR that the intent of COSRPs is to cover routes where applicable quantities of oil are transported. Railroads are not required to include routes or route segments in response zones when applicable quantities of oil are not transported on these routes or route segments. We assume that routes transporting applicable quantities of oil are a subset of the routes that railroads must already identify under the requirements for routing analysis in the HM–251 final rule. Therefore, we are editing the applicability language in § 130.100 to state, ''any route or route segments used to transport. . .a single train carrying. . . .'' This clarification further addresses IAFC's recommendation to avoid using the term ''transports a single train transporting'' in the requirements proposed in § 130.101, adopted in § 130.100.

The CWA requires OSRPs for any facility that ''because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.'' PHMSA is not aware of evidence demonstrating that routes located more than 0.5 miles from navigable waters provide a sufficient buffer to ensure substantial harm could not occur in the event of a spill. The EPA's FRP requirements in section 5.0 of attachment C–III (''Calculation of the Planning Distance'') to appendix C of 40 CFR part 112 provide detailed planning calculations for facilities to determine the threat to fish and wildlife and sensitive environments or downstream public water intake as a result of a discharge of oil to navigable waters. For example, under section 5.6 of the above-referenced attachment, facilities located further than 0.5 miles from navigable waters must also consider the distance to nearby storm drains and factors that may be conducive to overland transport of oil to these storm drains. Additionally, section 5.7 of the above-referenced attachment requires an owner or operator to consider the ''proximity to fish and wildlife and sensitive environments, not bordering a navigable water'' in whether a facility poses substantial harm. PHMSA was unable to perform detailed analysis for features such as storm drains, or topographic features, along every point on an HHFT route, so PHMSA assumes that all rail routes used for applicable quantities of oil are expected to have the potential to impact navigable waters. Therefore, the entire route carrying applicable oils should be covered by the planning requirements for COSRPs.

PHMSA disagrees that Class II or III railroads transporting petroleum oil should be excluded from COSRP requirements. As evidenced by the derailment in Aliceville, Alabama, which involved a 90-car crude oil unit train, Class II and Class III railroads are transporting quantities of petroleum oil that pose the same risk as Class I railroads. Nothing in the regulations precludes Class I railroads from assisting short lines in developing a plan or precludes one railroad from utilizing resources provided by another railroad through contract or other means; however, both railroads would be subject to submitting a plan covering their responsibilities to ensure those responsibilities are clearly delineated.

Summary of Comments Regarding General Requirements for COSRP Format (§ 130.105)

In the NPRM, PHMSA proposed a COSRP format requiring a core plan with general information applicable to the entire plan and response zones with information specific to the route segment. The NPRM proposed that the plan must use and be consistent with the core principles of the National Incident Management System (NIMS), including use of the Incident Command System (ICS) throughout the plan. The NPRM also proposed use of the Integrated Contingency Plan (ICP) as an alternate format.[20]

NTSB commented in support of the general plan requirements in proposed § 130.102, stating they would ''serve to ensure a carrier's ability to respond to worst-case oil and petroleum discharges called for by Safety Recommendation R–14–005.''

We received comments from State government agencies and railroad stakeholders on the use of alternative plan formats. The Washington State Department of Ecology and AAR both supported the permissive use of ICPs as providing greater flexibility to meet planning standards when subject to requirements by other agencies. Both AAR and other State government commenters highlighted differences between requirements for State plans

[19] United States Coast Guard, Hazardous Materials Division, available at: *http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Design-Engineering-Standards/eng5/*

[20] In June 1996, the National Response Team (NRT) published the Integrated Contingency Plan (ICP, or One Plan) Guidance with support from five agencies: The Environmental Protection Agency (EPA); the Coast Guard; the Occupational Safety and Health Administration (OSHA); the Office of Pipeline Safety of the Department of Transportation (DOT); and the Minerals Management Service (MMS) of the Department of the Interior. The ICP provides a mechanism for consolidating multiple facility response plans into one plan that can be used during an emergency. See 61 FR 28642

and the proposed Federal plan requirements.

Several commenters supported the requirement that plans integrate NIMS and ICS, while also requesting further clarification of their roles. API commented in support of ensuring that ''the terminology used and practices required are consistent with established response organizations and structures to include the National Response Framework, the National Contingency Plan, the National Preparedness and Response Exercise Program (NPREP), and National Incident Management System (NIMS).'' Additionally, industry commenters highlighted the importance of NIMS and ICS, and recommended additional clarity. AAR stated, ''PHMSA should clarify that railroads, at their discretion, may use EPA's or DHS's criteria to be consistent with the NCP'' in relation to the requirements to use NIMS/ICS terminology. API highlighted the importance of railroad personnel following NIMS and ICS using ''common terminology, training and management of change for staff,'' further suggesting that PHMSA and FRA ''should be prepared to provide guidance and oversight to the regulated community as they establish processes that support personnel and organizational changes.''

IAFC recommended clarifying that NIMS and ICS are utilized throughout the plan by adding the underlined words to the proposed requirements: ''The plan must use *and be consistent with the core principle* of the National Incident Management System (NIMS) *including the utilization of the* ICS.''

Comments in Response to General Requirements for COSRP Format (§ 130.105)

PHMSA agrees with providing flexibility for railroads submitting multiple plans under differing Federal and State regulations. The ICP was developed to provide a single format for response plans in recognition that entities may be required to develop and submit plans for multiple Federal agencies to cover different facility types and activities. The ICP provides railroads with flexibility.

We are also adding an alternative for railroads to submit plans that meet State requirements, provided the State plan also meets the minimum requirements of the Federal standard. In addition to the State plan, the railroad must include the information summary (including the contact information for the Qualified Individual) and ensure through contract or other approved means the availability of private personnel and equipment necessary to respond to a worst-case discharge (WCD) or a substantial threat of such a discharge. The use of State plans is voluntary and, therefore, does not impose any additional burdens. PHMSA is adding this alternative to ensure that railroads do not engage in unnecessary duplication and to provide regulatory flexibility in response to comments that discuss the potential burden from states with differing requirements and plan formats. PHMSA encourages railroads to make use of this alternative when possible to minimize compliance costs. This alternative will provide equivalent or greater protections to the Federal response plan. Furthermore, the allowance of ICP and state plans is consistent with the OPS requirements for pipelines. In addition, it is PHMSA's intention that railroads will be able to use the same data and other information gathered for other response plans (*i.e.,* Federal, state, international) to inform the OSRPs required under this rulemaking action, provided they meet PHMSA's OSRP requirements.

PHMSA agrees that consistency with NIMS and ICS is important. Requiring use of NIMS and ICS maintains consistency with EPA or DHS and ensures better consistency with the current response framework. We are adopting the requirements as proposed in the NPRM, with clarifications suggested by IAFC to highlight the role of the NIMS and ICS throughout the plan, and with minor edits for plain language.

Summary of Comments Regarding Worst-Case Discharge for COSRP (§§ 130.105 and 130.5)

Under the statute, worst-case discharge (WCD) means ''the largest foreseeable discharge in adverse weather conditions,'' as defined at 33 U.S.C. 1321(a)(24). PHMSA proposed to define a WCD from a train consist as the greater of: (1) 300,000 gallons of liquid petroleum oil; or (2) 15 percent of the total lading of liquid petroleum oil transported within the largest train consist reasonably expected to transport liquid petroleum oil in a given response zone.

Environmental groups stated the WCD calculation was too low and should instead include the entire petroleum content of all tank cars on the train and additional factors affecting the incidence or severity of a derailment (*e.g.,* bridge collapse, tide activity, etc.). The coalition comments from Riverkeeper, Center for Biological Diversity, et al. stated that the analysis for WCD was insufficient. They provided several arguments against specific analysis points in the agency's determination of WCD, citing an incomplete incident history, disagreeing with adjustments made to account for the protections from the enhanced tank car standard in the HM–251 final rule, and asserting that CWA only provides deviation from setting a WCD at a package's full contents when ''secondary containment'' is provided.

The coalition comments from Riverkeeper, Center for Biological Diversity, et al. also stated the WCD should be redefined to include the full contents of all tank cars carrying petroleum oil in a train. They stated the full contents is a ''reasonable assumption'' and provided examples of Area Contingency Plans (ACP) that plan for a WCD using the full contents of all tank cars. The coalition comments from Riverkeeper, Center for Biological Diversity, et al. also stated that the final rule must ''appropriately account for a range of damages and resources required to rehabilitate communities and the environment after a worst-case disaster.''

Some private individuals supported removing the ''300,000 gallon'' option for the WCD and requiring it to be 15 percent for all trains carrying petroleum oil. These commenters stated 300,000 gallons was too low of a calculation. However, they did not address train configurations for which 300,000 gallons is a greater volume than 15 percent.

Response to Comments Regarding Worst-Case Discharge for COSRP (§§ 130.105 and 130.5)

This final rule adopts the proposed requirements for WCD. Under the statute, worst-case discharge means ''the largest foreseeable discharge in adverse weather conditions,'' as defined at 33 U.S.C. 1321(a)(24). The largest foreseeable discharge includes discharges resulting from fire or explosion.[21] PHMSA and FRA have not observed any unit train derailments that have resulted in the release of the entirety of the train's contents. Furthermore, the likelihood of a unit train losing the entire contents of all tank cars is extremely low. Therefore, defining a WCD as the total contents of all tank cars overstates the ''largest foreseeable discharge.''

PHMSA disagrees that the analysis for the WCD is inadequate; it is based on the U.S. incident record relevant to the applicability of this rule. PHMSA identified and analyzed the quantities released from tank cars in the major derailments involving petroleum oil that have occurred in recent years in the

[21] 33 U.S.C. 1321(j)(5)(D)(iii).

United States to estimate the approximate volume of petroleum oil that would constitute a WCD in the United States. PHMSA continues to maintain that including rail incidents that have occurred outside of the United States is not appropriate for COSRP analysis. PHMSA's analysis indicates that the WCD, in terms of the quantity released from tank cars that punctured or experienced thermal tears, would be approximately 500,000 gallons of petroleum oil.

Recognizing that the comprehensive safety enhancements, including tank car design enhancements promulgated in the HM–251 final rule, would reduce the overall quantity released in a derailment scenario occurring in the future, PHMSA did not propose 500,000 gallons as a planning volume for a WCD. The HM–251 final rule adopted lower speed limits for HHFTs during the phase-in period for the new tank car design to reduce risk. PHMSA believes the safety improvements for HHFTs adopted in the HM–251 final rule provide a reasonable basis for adopting a lower planning volume for WCDs. Adjusting the largest quantity released within the crude-by-rail derailment history (*i.e.,* 474,936 gallons) by the expected mitigation of damages (0.33) from the HM–251 rule, we expect related safety improvements over the 10-year period from 2017–2026.[22] This calculation (474,936 x 0.67) yields 318,000 gallons. Specifically, the quantity released in the Casselton, ND indicates that a WCD would involve 474,936 gallons. Expressed as a percentage of the total petroleum oil lading carried by the derailed Casselton, ND train, a WCD would involve approximately 15 percent of the total (474,936 gallons released divided by the 3,088,000 gallons carried by the train; rounded down from 15.38 percent). Specifically, 104 tank cars loaded with petroleum oil were involved in that derailment, and we have assumed that the all tank cars contained 29,700 gallons. Notably, there have been only two derailment incidents in the U.S. safety record that had greater than 15 percent of material released: Casselton, ND and Aliceville, AL. The crude oil tank car fleet has seen major improvements since the HM–251 final rule, and if those derailments would have occurred given the current fleet composition, we would expect the releases for both incidents to fall beneath the WCD threshold. In addition, the WCD is sufficiently high so that no incident has exceeded it to the degree that it seems unlikely that preparation for the WCD amount would have resulted in an inadequate response to the incident that occurred.

As previously discussed, PHMSA accounted for the expected mitigation of damages achieved through the HM–251 final rule to determine the proposed 300,000 gallon WCD planning volume. However, for the proposed WCD planning volume based on the percentage of the total petroleum oil lading within a train consist, PHMSA did not incorporate the expected mitigation of damages of the HM–251 rulemaking because we believe that this percentage does not account for uncertainty in large train configurations. Large train configurations (*e.g.,* 135-tank car trains) have an appropriate WCD planning volume, commensurate with their presentation of increased risk.

As an illustration of the WCD definition and its application to WCD planning volumes for use in COSRPs, consider a 50-tank car train and a 100-tank car train carrying petroleum oil. For the 50-tank car train, the WCD planning volume would be 300,000 gallons, since 300,000 gallons is greater than 15 percent of the total petroleum oil lading carried by that train (*i.e.,* 225,000 gallons, assuming each tank car carries 30,000 gallons). For the 100-tank car train, the WCD planning volume would be 450,000 gallons, since 15 percent of the petroleum oil carried by that train—or 450,000 gallons—is greater than 300,000 gallons. Furthermore, PHMSA acknowledges both the existence of even larger trains (*e.g.,* 120-tank car trains), as well as the uncertainty surrounding the number of tank cars loaded with petroleum oil that might be transported by rail in the future.

PHMSA maintains that distinguishing larger train configurations from relatively smaller ones is appropriate given differences in risk, and we further maintain that this calculation is to be used to determine the ''planning volume'' for WCDs within a given response zone. It is not re-calculated for each train in operation within a given response zone; rather, it is based on the largest train configuration that can reasonably be expected to transport petroleum oil within a response zone. Furthermore, nothing in the rulemaking prohibits a railroad from using a higher planning volume in their plan.

Given that the discussion above applies to the WCD for the expanded applicability to unit trains of petroleum oil, we are clarifying that the calculation for 300,000 gallons or 15 percent of the lading across the train consist applies to unit trains. As stated in the NPRM, PHMSA did not propose to change the applicability requirements for tank cars exceeding 42,000 gallons. When separating the definition of ''maximum most probable discharge'' and ''worst-case discharge,'' the planning volume for tank cars exceeding 42,000 gallons was inadvertently omitted. Therefore, we are amending the definition of ''worst-case discharge'' to reinstate that the planning volume for tank cars exceeding 42,000 gallons ''equals the capacity of the cargo container.''

Summary of Comments Regarding the Response Zone for COSRP (§§ 130.105 and 130.5)

In the NPRM, PHMSA proposed to define the term response zone as ''one or more route segments identified by the railroad utilizing the response resources which are available to respond within 12 hours after the discovery of a WCD or to mitigate the substantial threat of such a discharge for a comprehensive plan meeting requirements of subpart C.'' PHMSA additionally asked whether the 12-hour response time was sufficient for all areas subject to the plan, or whether a shorter response time (*e.g.,* 6 hours) would be appropriate for certain areas (*e.g.,* High Volume Areas) which pose an increased risk for higher consequences from a spill. PHMSA further invited comments on the criteria and support-levels for ''high volume areas.'' Commenters to the NPRM provided recommendations for determination of the response zone and response times.

Commenters recommended several different revisions to the definition of response zone. Environmental groups and State agencies recommended re-defining response zones as pre-defined ''geographic response areas.'' This suggestion promotes resource sharing and more closely aligns with the EPA response structure. For example, the Minnesota Pollution Control Agency gave the example of non-profits ''WAKOTA CAER and Red Wing CAER,'' which have voluntarily formed a response cooperative. The Minnesota Pollution Control Agency further suggested utilizing response zones with pre-defined areas because, ''all railroads/industries operating within that geographical area could be encouraged or required to establish caches of equipment, contractors and other response resources jointly. Those resources would then be available to any industry with similar preparedness/response requirements.''

Other commenters supported resource sharing without linking the requirement to specific geographic response zone definition. ASLRRA requested that short

[22] Please see the benefits section, Section 3, in the RIA.

lines (Class II or III) operating as a tenant to a Class I railroad be permitted to enter into a voluntary agreement to use the plan and resources belonging to the Class I railroad for the area of track (*e.g.,* response zone) which falls under the tenant/host relationship. NTSB encourages, ''small entities to enter into an agreement similar to the one managed by the Marine Preservation Association, a not-for-profit membership corporation that helps its members address problems caused by spills of oil and petroleum in transportation and allows its members to enter into a OSRO [oil spill removal organization] service agreements.''

AAR commented, ''PHMSA should allow each railroad (Class 1, 2 or 3) to define the number and location of 'Response Zones' that meet the specific railroad's existing incident management team (''IMT'') location, organizational structure, and contractor network. Railroads should not be required to use a prescriptive set of planning standards that specify 'Response Zones.' '' AAR provided sample regulatory text:

> Railroad plan holders will develop ''Response Zones'' with response resources located within 12 hours of each point along the HHFT route where ''Response Activities'' would occur. Additionally, Response Zone locations, boundaries and numbers will be based on the existing location and organizational structure of each railroad's incident management team (IMT) including Qualified Individuals (QIs), response resources, and railroad-contracted Oil Spill Removal Organization (OSROs) available to arrive onsite to mitigate a WCD or substantial threat of one.

Overall, most commenters felt that 12 hours was too long and recommended a shorter response timeframe ranging from immediately to 6 hours for all areas. Commenters expressed concerns about public safety and environmental damage that could be caused by spills, fires, or explosions during the first 12 hours and provided detailed descriptions of harm that could occur during that timeframe. Commenters claimed faster response times provide better protection, but they provided no quantitative data to support the effectiveness of faster response resources.

Commenters provided examples of State requirements and proposed legislation specifying response times for various activities related to responding to rail incidents. The State of Minnesota requires railroads to: (1) Within one hour, provide qualified personnel on-scene to assess the discharge; (2) within the first 8 hours, be capable of deploying resources to contain and recover 10 percent of the volume of the worst-case scenario and to protect sensitive areas and potable water intakes; and (3) within the first 60 hours, deploy full response resources for containing and recovering the worst-case scenario. The coalition comments from the Riverkeeper, Center of Biological Diversity, et al. provided the response times in the Emergency Response Guidebook and the requirements adopted in the HM–251 final rule for thermal protection capable of withstanding a pool fire for 100 minutes.

Commenters provided support for including different areas with a faster response timeframe. NTSB suggested that no areas should have a longer response time than 12 hours, given the capability for the 12-hour response time was already demonstrated. NTSB also suggested adopting a 6-hour response time for ''High Volume Areas'' (consistent with the definition in § 194.5 of the pipeline regulations, excepting the pipeline diameter). NTSB further recommended that PHMSA adopt a High Volume Area definition ''that recognizes credible single HHFT exposure risks based on the proximity of the track to the river and natural drainage paths,'' citing the pipeline spill in Marshall Michigan [23] and the Lac-Mégantic, Quebec derailment as having caused more than one billion dollars in damage and supporting a need for faster response times.

Commenters defined a wide range of features, such as population, schools, economic activity, cultural and ecological significance, geologic factors, speed of tides, and location of nuclear reactors or other higher risk activities, as necessitating a faster response time. Commenters most frequently described drinking water intakes, environmentally-sensitive areas, and specific local waterways, such as the Hudson River, as necessitating faster response times and more detailed identification or mapping in a plan. Commenters also included suggestions such as scaling response times based on the amount of time oil would take to reach water or the volume of applicable trains in an area as criteria for faster response times. The State of Idaho Department of Environmental Quality included concerns that inclement weather and fast moving water streams would delay response and lead to larger area of impact. Commenters also focused on risk factors, and suggested weighting factors from the railroad routing analysis required by § 172.820 of the HMR. Commenters also provided the ''High Consequence Areas (HCA)'' from the part 195 of the OPS pipeline regulations as an example of risk-based criteria. These areas include population density in the definition and are related requirements for an operator's pipeline integrity management program. It should be noted this is a separate program from the OPS requirements for OSRPs in 49 CFR part 194.

AAR requested clarification that response times are a ''planning standard, not a compliance standard. For example, if a response vehicle has a flat tire on the way to a response, the company should not be cited as being out of compliance.'' AAR also requested that PHMSA ''clarify that the 12-hour response timeframe applies only to track where HHFT trains traverse, and not to the entire rail network.'' AAR provided examples of specific changes to the regulatory text to clarify this responsibility.

Response to Comments Regarding Response Zone for COSRP (§§ 130.105 and 130.5)

We are adopting the proposed requirements for response zones with clarification to the regulatory text in response to commenters. We disagree with limiting response zones to pre-defined areas, whether geographic response areas or similar criteria. Providing pre-defined response areas exceeds the scope of this rulemaking, as commenters did not have the opportunity to comment on such boundaries. Furthermore, the requirements for consistency with the NCP, ACP, along with the notification requirements, ensure that railroads have the necessary consistency with local and regional response structures.

We agree with AAR that the intent of the requirement for response zones is to allow railroads the flexibility to develop response zones and stage resources, provided that the planning standards for resources are met. The draft RIA provided an estimate of the number of response zones for each railroad for the purpose of estimating costs. We did not intend for the assumptions and estimation in the draft RIA to prescribe a specific number of response zones. Furthermore, we did not intend for railroads to provide information and resources about route segments where applicable quantities of oil are not transported. Therefore, we are clarifying both the definition of response zone and the general requirements to communicate that railroads may determine the boundaries of response zones, provided that the plan demonstrates that resources within the response zone meet the planning criteria. We are also clarifying that plans

[23] *https://www.ntsb.gov/investigations/AccidentReports/Pages/PAR1201.aspx.*

with only one response zone do not need to duplicate information between the core plan and response zone.

In general, we agree that railroads and industries should be encouraged to share response resources; however, we disagree that adding pre-defined response zone boundaries for response zones is necessary to enable resource sharing. Nothing in this rulemaking prohibits the formation of cooperatives or other such resource sharing agreements, provided that each railroad required to have a plan demonstrates the availability of appropriate resources by contract or other means. Additionally, railroads communicate the response zone location to emergency response planning officials through the information sharing notification requirements adopted in § 174.312, providing adequate information to enable resource sharing.

The purpose of the response time requirement is to ensure railroads are demonstrating that they can identify, and ensure by contract or other means approved by the President, the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge.[24] USCG has developed planning guidance and standard calculations for response times in the 2016 ''Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program.''[25] Adopting a 12 hour response time and the USCG's assumption that response resources can travel according to a land speed of 35 miles per hour ensures that the resources listed in the plan are available for a response and that response personnel will know when the resources can reasonably be expected to be available on-site. However, we disagree with AAR's recommendation that it is necessary to include additional regulatory language stating 12 hours is not a performance guarantee.

In this final rule, we are adopting the requirement for a single response time of 12 hours in all areas. This response time is consistent with the requirement for ''all other areas'' used by the OPS for pipelines. In the NPRM, PHMSA requested public comment on whether the 12-hour response time would be sufficient for all areas subject to the plan, or whether a shorter response time (*e.g.,* 6-hours) would be appropriate for certain areas (*e.g.* High Volume Areas) that pose an increased risk for higher consequences from a spill; on criteria to define such ''High Volume Areas'' where a shorter response time should be required, as well as whether the definition for ''High Volume Area'' in 49 CFR 194.5 (excluding pipeline diameter) captures this increased risk, or if there is other criteria that can be used to reasonably and consistently identify such areas for rail; on whether requiring response resources to be capable of arriving within 6 hours would lead to improvements in response, and for specific evidence of these improvements; and on whether the final rule should have a longer response time than 12 hours for spills for all other areas subject to the plan requirements in order to offset costs from requiring shorter response times for High Volume Areas. Commenters did not provide adequate support to demonstrate that requiring the staging of resources for response times faster than 12 hours would bring about measurably improved protection or benefits, and that there were clear definitions for adequately defining high volume areas. Without sufficient data, PHMSA is unable to support a clear definition of a high volume area. Therefore, in the interest of safety and economic efficiency, PHMSA assumes the entire route threatens navigable water and that further identification for every point along the route would be impracticable. Rather, the use of 12 hours as a planning framework provides flexibility for OSROs to maintain larger inventory to be included within the response area. There is nothing prohibiting railroads from staging resources closer to specific route segments, and disagree that a voluntary designation will increase coverage for sensitive areas. We also note that providing response resources to remove, maintain, and mitigate WCD does not replace other emergency response procedures and resources for responding to a release of hazardous materials by rail.

Summary of Comments Regarding COSRP Consistency With NCP and ACP (§§ 130.110 and 130.115)

NTSB commented generally in support of compliance with the National Contingency Plan and Area Contingency Plan provisions proposed in § 130.103, stating they would ''serve to ensure a carrier's ability to respond to worst-case oil and petroleum discharges called for by Safety Recommendation R–14–005.''

Coalition comments from Riverkeeper, Center for Biological Diversity, et al. questioned whether the proposed ''minimum consistency'' with the NCP and ACPs meets the requirements of OPA 90. Conversely, AAR stated that PHMSA ''must clarify which elements are necessary for minimum consistency with the National Contingency Plan.''

IAFC supported the requirements for minimum consistency with NCP, but recommended additional clarification to ensure that the railroads understand that both Federal and state entities have an active role in the unified command, citing the NCP requirements in 40 CFR 300.105(d). The NCP requirements in 40 CFR 300.105(d) provide the ''organizational concepts of the national response system'' and describe a framework which, ''brings together the functions of the Federal Government, the state government, and the responsible party to achieve an effective and efficient response.'' IAFC suggested the proposed language for the requirement in § 130.103(a)(1)(i), namely to ''[d]emonstrate a railroad's clear understanding of the function of the federal response structure'' be amended to include the ''applicable state and federal response structure.''

Overall, commenters supported consistency with the ACP, but had several suggestions related to the inclusion of Environmentally Sensitive Areas (ESAs). Environmental groups and private citizens supported special identification and protections for ESAs. They also described many specific geographic areas, or suggested criteria for determining which environmentally sensitive areas require additional protection. They often cited cultural, economic, and ecological significance in their descriptions. The coalition comments of Scenic Hudson and Riverkeeper highlighted the importance of including additional strategies to protect and deflect oil from ESAs. They further recommended including a requirement to update and revise the plan contents.

AAR noted that the burden of railroads determining ESAs would be too great and recommended limiting the requirement to:

> [R]eadily available U.S. Fish and Wildlife and Sensitive Environment Regional Contingency Plans (RCPs), Area Contingency Plans (ACPs), Sub-Area Contingency Plans (SACPs) or Geographic Response Plans (GRPs) Annex(s) or databases to identify environmentally sensitive or significant areas as defined in § 130.5 of this part, along the route, which could be adversely affected by a worst-case discharge and reference available SACPs or GRPs deflection and protection strategies to protect these areas.

A private individual also requested that PHMSA ban the use of dispersants,

[24] 33 U.S.C. 1321(j)(5)(D)(iii).

[25] *https://homeport.uscg.mil/Lists/Content/Attachments/1286/Guidelines%20for%20the%20USCG%20OSRO%20Classification%20Program.pdf.*

instead of limiting their use to scenarios where they are permitted and approved by the ACP and Federal OSC.

Response to Comments Regarding COSRP Consistence With NCP and ACP (§§ 130.110 and 130.115)

PHMSA maintains that the requirements for ''minimum consistency'' fulfill the requirements of the CWA. The requirements for the NCP and ACP in 40 CFR part 300 include many sections that may not be applicable to the rail context. Clarifying which requirements must be followed for minimum consistency ensures the most important elements are included. Doing so also responds to AAR's comments in response to both the ANPRM and NPRM requesting additional clarity and provides greater consistency with the OPS requirements for pipelines. We further agree with IAFC that the intent of requiring a clear understanding of the Federal response structure is to ensure that railroads can operate within a unified command, which may include State entities. Therefore, we are simplifying the requirement to state that OSRPs must, ''[d]emonstrate a railroad's clear understanding of the Incident Command System and Unified Command and the roles and responsibilities of the Federal On-Scene Coordinator.'' Overall, we are adopting the requirements as proposed, with clarifications, as discussed in this section.

We agree with AAR that the intent of including ESAs was to ensure consistency with the approach identified in ACPs. We did not intend to include the additional burden of requiring a new category for analysis. Therefore, we are adopting AAR's suggestion that we clarify that the inclusion of required ESAs be limited to those which have been identified in the existing contingency plans. We are further simplifying the definition of ESA to mean a ''sensitive area'' identified in the applicable Area Contingency Plan, or if no applicable, complete ACP exists, an area of environmental importance which is in or adjacent to navigable waters. We are not adopting the recommendation to expand the definition of ESAs to include additional areas and to include additional deflection strategies at this time. Doing so would require railroads to perform extensive analysis and develop new expertise, which would further delay the development and implementation of plans.

We further disagree that DOT should ban the use of dispersants, but rather the appropriate use should be determined per the NCP, ACP, and Federal OSC. The use of dispersants is generally not authorized by the NCP or ACP for inland oil discharges.

Summary of Comments Regarding Notification Procedures and Contacts for COSRPs (§ 130.125)

Overall, commenters supported the inclusion of notification requirements. The NTSB commented in support of the notification procedures proposed in § 130.105, stating they would ensure a carrier's ability to respond to worst-case oil and petroleum discharges called for by Safety Recommendation R–14–005.

Commenters also recommended providing time limits on the notification procedures. Riverkeeper, Center for Biological Diversity, et al. stated that because the proposed requirements do not explicitly require immediate communication ''between OSROs or the affected industry and the Federal official in charge of spill response,'' the proposed requirements do not meet the requirements of OPA 90.

Several commenters also recommended that the notification procedures either include additional state or local resources (*e.g.,* SERCs, TERCs, water utilities, etc.) or that the communication between the railroad and local resources be formalized with additional requirements. The State of Minnesota provided the State requirement for annual communication with emergency managers, fire departments, and employee unions as an example of more formal communication.

Response to Comments Regarding Notification Procedures and Contacts for COSRPs (§ 130.125)

The proposed rule establishes a new section with requirements for the notification procedures and contact information that a railroad must include in a COSRP. The proposed rule sought to improve consistency with existing requirements for pipelines in § 194.107 and appendix A to part 194. Both part 194 and the combined comment of AAR and ASLRRA in response to the ANPRM include a requirement for immediate communication procedures. Therefore, in the final rule we are adding a requirement to include ''immediate notification procedures'' to the proposed language in § 130.107(a)(4) stating, ''the circumstances and necessary time frames under which the notifications must be made.''

We disagree that listing additional entities or further formalizing communication requirements is necessary at this time. The government structure and the entities that require contacting will vary between States or localities, and based upon the characteristics of the response zone. Furthermore, the plan requires consistency with the NCP and ACP, which requires the railroads to understand the response structure along the route. Additionally, the information sharing requirements adopted in part 174 provide contact between the railroad and State and tribal agencies.

Summary of Comments Regarding Response and Mitigation Activities for COSRPs (§ 130.130)

Overall, commenters agreed that response and mitigation activities should be included in the plan. NTSB commented generally in support of the response and mitigation activities proposed in § 130.106, stating they would ensure a carrier's ability to respond to worst-case oil and petroleum discharges called for by Safety Recommendation R–14–005; however, commenters provided a range of suggestions on the response and mitigation activities included in the plan.

Some commenters provided general support for the response and mitigation activities, but also recommended additional specificity or clarifications. IAFC recommended the proposed language requiring resources able to ''remove oil'' be edited to ''control and remove oil'' to clarify that the plan also includes common and necessary response resources which may not directly remove oil. The National Association of SARA Title Three Program Officials (NASTTPO) supported the proposed requirements for railroads to include the location and inventory of equipment that can be mobilized in a response, but recommended including the number and training level of personnel that will be mobilized and providing a description of the response time, assuming favorable weather.

Many commenters offered multiple suggestions to require railroads to provide response resources which exceeded the scope of the proposed requirements. For example, some commenters suggested requiring railroads to stage additional resources that were not proposed or to require specific equipment, such as helicopters with firefighting capabilities or ''SAFETY Rail Cars'' which contain firefighting and containment equipment. One private individual suggested all equipment or supplies should be heavily duplicated. Other commenters recommended adding requirements for railroads to provide equipment to local responders. For example, the City of Berkeley commented that response

resources should be available to first responders, in addition to the clean-up resources and personnel.

Commenters recommended requiring more detailed procedures. For example, commenters recommended including supplies and procedures to account for more specific WCD scenarios, such as specific adverse weather conditions, bridge collapses, and the effect of tides. Citizens Acting for Rail Safety-Twin Cities requested ''public education'' that includes evacuation procedures. Scenic Hudson and Riverkeeper suggested that, at a minimum, COSRPs should ensure, ''the maximum cleanup practicable, given both the weather, the physical conditions and other factors at the spill site.'' Commenters also recommended specifying requirements for differing procedures to account for different oil types, such as heavy- or light-crude oil, citing studies on differing clean-up procedures.

The coalition comments from Riverkeeper, Center for Biological Diversity, et al. expressed concern that ''certifying'' that the identified resources are available by ''contract or other means'' is not sufficient to ensure that the preparations have been made. They requested that PHMSA reintroduce the requirement that OSRPs show—by contract—that preparations have been made to respond to the maximum extent practicable. They further specified that the proposed rulemaking should account for a range of damages and resources required to rehabilitate communities and the environment after a WCD. The comments included a list of examples of potential damages ranging from ''loss of life'' to ''fear of a future catastrophe,'' but do not specify figures or how to address these damages beyond ''inclusion'' in the WCD.

Response to Comments Regarding Response and Mitigation Activities for COSRPs (§ 130.130)

Overall, we have adopted the proposed requirements, which continue to align with the pipelines requirements. Many of the additional response resources recommended by commenters would increase the burden of the rulemaking beyond what was proposed in the NPRM. Furthermore, the comments recommending additional resources and activities lacked data about the corresponding costs and benefits of these recommendations. We did not propose specific mitigation activities. We are clarifying in the final rule that the equipment and resources must meet the planning standards outlined in appendix C of 33 CFR part 154. This is consistent with the approval of OSRPs for pipelines in 49 CFR part 194 and the assumptions in the NPRM; it also maintains a level of OSRO response resources equivalent to that specified by the USCG in 33 CFR 154.1035 and 155.1035. We are maintaining the exception from listing equipment for OSROs classified in the aforementioned sections. We expect railroads, in cooperation with OSROs, to determine and describe the appropriate mitigation and response activities they use relative to the response zone and available resources. The guidance in appendix C of 33 CFR part 154 provides the necessary flexibility to allow railroads and OSROs to tailor activities and equipment to the specific geographic conditions in the response zone.

We agree with IAFC's proposed edit to include the word ''control.'' It clarifies that the range of activities may include those beyond the direct removal of oil.

We disagree with coalition comments from Riverkeeper, Center for Biological Diversity, et al. that the language to ''certify'' response resources is inadequate. The plan requirements make it clear that the resources must be available by ''contract or other means.'' [26] Plans must meet all requirements of subpart C of part 130 for approval and, therefore, must demonstrate a ''contract or other means'' of availability.

Summary of Comments Regarding Training Procedures for COSRPs (§ 130.135)

The NPRM proposed requirements for training of railroad employees to ensure that they are capable of carrying out a role in the plan and are familiar with the applicable requirements. The proposed training requirements further specify the minimum elements to be included in training for all reporting personnel and railroad employees subject to the plan. The NPRM also proposed requirements for the railroad to document and certify completion of this training. The NPRM asked commenters whether ICS incident commander-level training should be required for the Qualified Individual.

PHMSA received several comments about COSRP training procedures. Many commenters highlighted the importance of training. NTSB commented generally in support of the training procedures proposed in § 130.107, stating they would ensure a carrier's ability to respond to worst-case oil and petroleum discharges, as called for by Safety Recommendation R–14–005. Many commenters provided suggestions for additional training requirements that exceeded the scope of the proposed rulemaking, such as requiring railroads or shippers to either train or provide additional funding for the training of firefighters and local responders. NTSB also recommended requiring the use of training referenced by OSHA in 29 CFR 1910.120(p) and (q) and by the National Fire Protection Association (NFPA) in Standard 472.12. The State of Idaho recommended increasing training frequency to every three years, instead of every five years.

Some industry commenters suggested additional clarification was needed for training requirements. API suggested that the training standards lacked specificity and needed to describe the required training for the Qualified Individual and clarify differences ''for personnel on the train versus other railroad personnel, or whether or not plans and employee training records should be kept on the trains or with the conductor.'' They recommended aligning these practices with commonly accepted practices for other modes and facilities to provide consistency and confidence in railroad capabilities.

AAR commented that the proposed training is too broad and does not sufficiently protect railroads from liability relating to volunteers working under the direction of state and other stakeholder groups. They provided suggested edits to the proposed regulatory text in § 130.107(c)(4)(d), including clarifying that ''[p]lan holders shall not be responsible for contracting with or training volunteers during responses working under the direction of state or stakeholder groups'' and distinguishing that additional training standards may apply to response personnel ''under contract to the plan holder.''

Commenters also provided suggestions on the recordkeeping and re-training requirements. The coalition comments from Riverkeeper, Center for Biological Diversity, et al. stated it is not sufficient to certify that employees received training, as 33 U.S.C. 1321(j)(5)(D)(iv) states that ''a response plan must describe the training to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge.''

Many commenters also responded to PHMSA's inquiry in the NPRM about whether the proposed training requirements were sufficient, or whether the Qualified Individual should be trained to the ICS Incident Commander-level. Commenters, including State governments and

[26] ''Contract or other means'' is defined in 49 CFR 130.5. This rulemaking did not change the definition.

emergency responder organizations provided support for requiring either the Qualified Individual or another individual to receive Incident Commander-level training. The Washington State Department of Ecology explained that the Qualified Individual and the Incident Commander do not perform the same functions, stating that railroads must identify an individual who will be trained and qualified to act as an Incident Commander, whether it is the Qualified Individual or some other individual. The IAFC further recommended requiring that Incident Commander training be consistent with the intent of ''Homeland Security Presidential Directive-5—Management of Domestic Incidents.'' Other commenters recommended further identifying and outlining the roles and responsibilities of an Incident Commander in the COSRP until the appropriate local, State, or Federal authorities take control of the incident. API supported a requirement to include Incident Commander training, as consistent with use of NIMS and ICS, but stated PHMSA and FRA should be prepared to provide guidance and oversight to the regulated community as they establish processes that support personnel and organizational changes.

Response to Training Procedures for COSRP Comments (§ 130.135)

We disagree with adding requirements for railroads to train emergency responders in State and local governments, or otherwise provide training which exceeds the scope of the rulemaking. Such comments did not account for current programs available to improve training of emergency responders. For example, PHMSA's Hazardous Materials Emergency Preparedness (HMEP) Grant Program awards more than $20 million annually in grant funding to States, Territories, and Tribes to carry out planning and training activities to ensure State and local emergency responders are properly prepared and trained to respond to hazardous material transportation incidents.[27]

We agree with the industry, State and other governments, and emergency responder organizations that a best practice is for the individual acting as the Incident Commander to have Incident Commander-level training to ensure the ability to operate in a unified command. We further agree that the railroads should have the flexibility to designate the Incident Commander, as someone other than the Qualified Individual to receive the training and serve in this role; however, we note that mandating that the railroad name the incident commander or requiring Incident Commander-level training may limit the railroad's ability to quickly establish an incident command after a release. Employees in proximity to an event may need to temporarily serve as the Incident Commander until additional employees arrive onsite to assume command. Therefore, we are encouraging, but not mandating, use of ICS–300, Intermediate ICS for Expanding Incidents, or equivalent, and NFPA 472 Chapter 8 for Incident Commander-level training as a best practice.[28] Additional guidance can be found in NFPA High Hazard Flammable Trains (HHFT) On-Scene Incident Commander Field Guide.[29]

We further disagree that the proposed training requirements lack clarity or create undue burdens to train volunteers. The training requirements allow railroads flexibility to provide training appropriate to an employee's role in carrying out the duties specified in the response plan. The regulatory text provides a note and illustrative examples as a reminder that other training may be applicable (see § 130.135(d)). However, this cross-reference does not impose new training burdens on employees or volunteers. Therefore, we are adopting the training requirements as proposed.

Summary of Comments Regarding Recordkeeping, Plan Updates, Submission, and Approval for COSRPs (§§ 130.145 and 130.150)

The NPRM inquired whether the proposed mandatory compliance date of 60 days after the date of publication of a final rule in the **Federal Register** was feasible. PHMSA received two comments in response to this inquiry. Citizens Acting for Rail Safety-Twin Cities supported the 60-day compliance date. AAR requested 180 days, stating the time was necessary for the coordination, contracting, and planning required for covered routes. They further stated that additional time would be needed if PHMSA did not adopt their recommendation for clarifying use of previously identified ESAs. API also suggested additional time would be necessary for railroads to develop COSRPs.

We also received other comments on various aspects of the recordkeeping and approval requirements. The coalition comments from Riverkeeper, Center for Biological Diversity, et al. recommended including ''CWA and OPA'' in the statement, ''FRA will approve the response plan if FRA determines that the response plan meets all requirements of this part to ensure plans meet both the regulations and the statute.''

Many commenters, such as the NASTTPO, agreed that FRA was the appropriate agency to review and approve plans. Several commenters questioned whether FRA had the resources and knowledge to approve and enforce the oil spill response planning regulations. NTSB noted that the requirements for FRA approval would work toward implementing the intent of Safety Recommendation R–14–2. NSTB further stated:

> It is vital that the FRA develop a program and provide sufficient resources for thorough on-site audits. This will help to avoid the regulated industry essentially policing itself and spill response plans being approved without sufficient verification. Therefore, we believe that while the proposed requirements in the NPRM for comprehensive OSRPs are complete and admirable, it is not enough to approve plans without trained staff to verify that sufficient resources and tactics are in place to ensure timely and effective responses to worst-case oil discharges.

API encouraged DOT to ensure that FRA receives the personnel, resources, and expertise necessary to execute its new role effectively and efficiently. API requested additional details related to FRA's COSRP administration, approval, and adjudication processes.

The Washington State Department of Ecology supported FRA approval with the proposed consultation by EPA and USCG, as well as expanding consultation to include states. Several commenters recommended requiring approval from additional entities. Private individuals suggested public hearings on plans prior to approval. Riverkeeper, Center for Biological Diversity, Sierra Club, etc. requested inclusion of ''regulatory impact survey'' of FRA's ability to enforce these requirements.

The coalition comments from Riverkeeper, Center for Biological Diversity, et al. further recommended adding a two-year limit to the time a railroad can operate without a plan, after submitting it for approval to better align with the OPA 90 law. The State of Idaho Department of Environmental Quality recommended requiring FRA to approve or deny plans within 180 days.

[27] *https://www.phmsa.dot.gov/grants/hazmat/hazardous-materials-grants-program.*

[28] *https://training.fema.gov/emicourses/crsdetail.aspx?cid=E300&ctype=R.*

[29] *http://www.nfpa.org/news-and-research/fire-statistics-and-reports/research-reports/for-emergency-responders/fireground-operations/high-hazard-flammable-trains-on-scene-incident-commander-field-guide.*

Comments from State governments and others suggested stricter timelines for resubmission of plans. The State of Minnesota suggested plans should be resubmitted every three years, instead of the five years proposed in the rulemaking. The State of Idaho Department of Environmental Quality recommended that the railroad should only have 30 days to revise plans that have been resubmitted after an initial denial. Citizens Acting for Rail Safety-Twin Cities suggested that railroad plans should be updated and tested at least annually and within 30 days of railroad ownership change.

Other commenters requested additional clarification or criteria for conditions requiring resubmission of plans. Scenic Hudson and Riverkeeper stated that plans should be revised to reflect periodic updates to the ACP, especially when changes to the ESAs are made or the associated protection and/or deflection strategies are updated.

AAR supported the inclusion of specific criteria that determine when railroads must update plans, but suggested the proposed language was overly broad and required clarification. Specifically, AAR suggested clarifying that the requirement to modify plans to include new routes should only apply to HHFT routes. AAR also suggested that ACP or NCP changes must be presented to the railroad before being required to be considered for plan changes. AAR also suggested removing the requirement, ''Any other information relating to circumstances that may affect full implementation of the plan.''

Response to Comments Regarding Recordkeeping, Plan Updates, Submission, and Approval for COSRPs (§§ 130.145 and 130.150)

We agree with AAR's comments that 180 days (6 months) is appropriate for plan development, given the inclusion of geographic information. Railroads have already developed basic plans that include some components of the comprehensive oil spill response plans. Railroads are required to perform a routing analysis in 49 CFR 172.820, which indicates the location of applicable route segments. Furthermore, many railroads have participated in voluntary programs to increase spill preparedness. However, other plan elements may require reformatting or additional data gathering. Therefore, we believe 180 days is sufficient for the additional planning and coordination necessary to submit the COSRPs.

The Secretary of Transportation has to approve OSRPs for rail tank cars. While this authority was originally delegated by the Secretary to FRA, after considering comments questioning FRA's resources to approve plans, this authority is transferred to PHMSA, so that a sole DOT administration will have the authority to approve OSRPs. In addition to reviewing and approving OSRPs, PHMSA also has authority to pursure administrative penalties for violation of part 130, as it is issued pursuant to its delegated authority of 33 U.S.C. 1321(j).[30] PHMSA's Oil Spill Preparedness and Emergency Support Division is an established program with experience approving OSRPs for pipelines. However, as with other PHMSA programs and procedures, PHMSA will continue to work with FRA for guidance on rail specific information and procedures, including shared review and enforcement. We are also adopting the option for PHMSA to consult with the EPA or the USCG, as needed. As 33 U.S.C. 1321(j)(5)(E) requires that a plan that meets the minimum requirements be approved, we maintain that mandating multi-agency, public participation, or additional approval activities would fail to provide enough value in an explicit approval process to justify the increased burden and potential delay.

We disagree with Riverkeeper, Center for Biological Diversity, et al. that it is necessary to include ''the OPA and CWA'' in the regulatory text specifying plan approval. The regulatory authority for part 130 references the appropriate citations for CWA, and the requirements have been promulgated in accordance with the statutory requirements. Further specifying this law in the regulatory text as suggested by these comments may cause confusion.

We agree with Riverkeeper, Center for Biological Diversity, et al. that a two-year limit for the time a railroad can operate without a plan after submitting it for approval should be added to better align with the OPA 90 law (33 U.S.C. 1321(j)(5)(G)). We have added language to meet the requirements of OPA 90. Although, the NPRM did not include language specifying two years, the additional burden to approve plans in a timely manner is placed on PHMSA; there is no additional burden on railroads.

We disagree with States recommending a stricter timeline for resubmission of plans, as this goes beyond the proposed rulemaking and creates an additional burden for railroads not proposed. Furthermore, the requirement for resubmission every 5 years aligns with OPS requirements for pipelines and requires resubmission of plans within 90 days of significant changes that affect the implementation of the plan. We do not expect that more frequent submission of non-significant changes (*i.e.,* changes that will not affect the implementation of the plan) will improve response.

We agree with commenters on many of the clarifications requested regarding the approval and submission requirements. We agree with Scenic Hudson and Riverkeeper comments that changes to the identification ESAs or deflection strategies may require resubmission of the plan. In the proposed rule, we included language requiring updates for ''[a] change in the NCP or an ACP that has significant [effect] on the equipment appropriate for response activities.'' As ESAs are a component of the ACP, they would fall under this requirement. We have added language clarifying this relationship and explaining that a change to applicable ESAs is an example of a significant change to the ACP, requiring an update. We have also added ''the type of oil transported, if the type affects the required response resources, such as a change from crude oil to gasoline'' as an example of a change requiring an update. We agree with AAR that railroads only need to include updated route information if the route is used to transport trains requiring a COSRP.

We disagree, however, that further clarification of the requirements triggering an update to the plan is necessary. We also disagree with AAR that NCP and ACP changes must be presented to the railroads. It is the railroads' responsibility to ensure they maintain consistency with the NCP and ACP for the route segments in which they are operating. We further disagree that including ''information relating circumstances that may affect full implementation of the plan'' is overly broad. This language is consistent with the longstanding language in the OPS requirements for pipelines, and ensures that railroads are updating plans to reflect changing conditions and informing those who need to know.

We disagree with commenters that the methods proposed in § 130.109 and adopted in § 130.145 for railroads to respond to alleged deficiencies are inadequate and should be either further limited or further elaborated. These requirements are parallel to the longstanding requirements adopted by the OPS for pipelines, which ensure a documented and timely response to

[30] 33 U.S.C. 1321(b)(6) authorizes the Secretary of Transportation to assess ''Class I'' administrative penalies as specified and as updated in 40 CFR 19.4. The Attorney General has authority, pursuant to 33 U.S.C. 1321(b)(7), to pursue a civil penalty action in the district court in which is the defendant is located, resides, or is doing business.

either fix or contest the identification of deficiencies by the approval agency.

Comments Regarding Confidentiality and Security Concerns for COSRPs (§ 130.150)

Industry commenters described the plans as sensitive for both business and security concerns. AAR's comments highlighted concerns that releasing COSRPs to the public would lead to security risks. The comments emphasized that they considered routing information to be especially vulnerable. AAR cited terrorist propaganda targeting petroleum trains as support for their position. Other commenters highlighted the value of releasing plan information to a broader audience. These commenters expressed their belief in the importance of sharing information freely with State entities, emergency responders, and the public. The coalition comments from Riverkeeper, Center for Biological Diversity, et al. supported full public disclosure, but suggested that the plans be shared with public and local response agencies at a minimum. They requested details about which specific COSRP elements are sensitive. Members of Congress, States, and cities suggested both State and/or local authorities should receive unredacted plans, as they are familiar with protecting information, and since advance knowledge of the plans can help them better respond to incidents. For example, the City of Davis, California, provided examples of pipeline information and dam inundation maps, for which first responders and local entities who participate in NIMS structure sign non-disclosure agreements. Comments submitted on behalf of San Francisco Baykeeper requested the comprehensive plan information be provided online, including sensitive site strategies.

Response to Comments Regarding Confidentiality and Security Concerns for COSRPs (§ 130.150)

PHMSA values transparency and provides resources to the emergency response community in many forms. We continue to disagree, however, that providing an entire COSRP to emergency responders or the public will lead to better preparedness. We agree with AAR and ASLRRA that some elements of a COSRP may contain information that is business confidential, SSI, or personally identifiable information. Other elements are specific to railroad operations and will not inform the actions of first responders or communities.

Therefore, we are adopting the proposed requirements that railroads may follow existing procedures to request confidential treatment for documents filed with the agency, provided that the information is exempt by law from public disclosure (*e.g.,* exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), required to be held in confidence by 18 U.S.C. 1905). However, we are changing the citation for confidential information from FRA's procedures in 49 CFR 209.11 to PHMSA's equivalent procedures in 49 CFR 105.30. Under this process, the railroads may submit a redacted version of the plan, but PHMSA retains the right to make its own determination in this regard. We disagree with the comment that specific examples of confidential information should be provided. These decisions are determined on a case-by-case basis as differences between the levels of detail provided by the railroad may impact the determination. We maintain that these procedures are well-established and allow for both transparency and the safe and secure flow of information.

To ensure that State, tribal, and local government planning agencies receive advanced notification of the most pertinent information from COSRPs, we are adopting the proposed information sharing requirements in § 174.312 to include a description of the response zone and the contact information for the Qualified Individual for HHFTs subject to the response plan.

Summary of Comments Regarding Equipment Testing and Drill/Exercise Procedures for COSRPs (§ 130.140)

NTSB commented in support of the equipment testing and drill requirements proposed in § 130.108. One commenter recommended requiring heavily duplicated equipment testing. No other comments addressing the proposed equipment testing requirements were received. The NPRM received several comments on the drills/exercises.

NTSB and several other commenters recommended changing the term ''drill'' to ''exercise'' for consistency with National Scheduling Coordination Committee and PREP Guidelines. API requests additional clarification on use of Government Initiated Unannounced Exercises (GIUEs) in accordance with the PREP Guidelines. Other commenters commented in support of government-led exercises and drills.

Many commenters highlighted the value of regular exercises or drills between railroads and the local response community. Minnesota highlighted a State requirement for railroads to conduct at least one containment, recovery, and sensitive areas-protection drill every three years. NASTTPO described the need for exercises in rural areas, acknowledging, ''we have no expectation that rail carriers would be paying for the attendance of local first responders at training events and exercises, nor do we have an expectation that these exercises could rapidly be conducted in all areas,'' but continuing to request that rail carriers assess the local hazardous material response capability along their routes in conjunction with WCDs and prioritize field exercises and training for first responders in vulnerable areas.

Response to Comments Regarding Equipment Testing and Drill/Exercise Procedures for COSRPs (§ 130.140)

We disagree with commenters that duplicate equipment testing is necessary for all equipment. We are adopting the proposed requirement to describe and certify that equipment testing meets the manufacturer's minimum requirements. This ensures that the equipment is maintained as intended by the manufacturer and aligns with other Federal OSRP requirements under the USCG.[31]

This final rule adopts the use of PREP Guidelines as proposed, with a minor change in wording. We agree with commenters that the word ''drill'' should be replaced with ''exercise'' for better consistency with the PREP Guidelines. We disagree that commenters provided sufficient data to justify further prescribing exercise requirements at this time.

On April 11, 2016, USCG announced that the updated 2016 PREP Guidelines have been finalized and are now publicly available.[32] These updates included broadening section 5 of the PREP Guidelines to allow for the inclusion of other DOT/PHMSA-regulated facilities, such as rail. This provides an option for railroads to conduct exercises using the same guidelines as pipelines. The scope of the 2016 PREP Guidelines exercises is to: Demonstrate notification processes and accessibility between key facility personnel and the Qualified Individual; exercise the IMT's organization, communication, and decision-making in managing a response; and demonstrate the ability to deploy response equipment identified in the Facility Response Plan (FRP). The 2016 PREP Guidelines also specify that DOT/PHMSA has—and reserves—the

[31] 33 CFR 154.1057(a)(1).

[32] 81 FR 21362.

authority to conduct and require an operator to participate in a GIUE.

Summary of Comments Regarding Implementation of COSRPs and PHMSA Response (§ 130.155)

The NTSB provided support for the response plan implementation requirements proposed in § 130.112, stating they would ensure a carrier's ability to respond to worst-case oil and petroleum discharges, as called for by Safety Recommendation R–14–005. No other comments were received for this requirement. Therefore, we are adopting implementation language as proposed.

Summary of Comments Regarding Requirements for HHFT Operators and PHMSA Response (§ 174.310)

The State of California Department of Fish and Wildlife opposed including a cross-reference to part 130 requirements for COSRPs in the requirements for operators of HHFTs in § 174.310, stating that inclusion of the requirement inaccurately associates the plan with safety requirements related to the design, operation, and maintenance of railroads.

We disagree. Section 174.310 provides a consolidated list of PHMSA requirements specific to HHFTs. The section includes both unique requirements and cross-references (*e.g.,* additional security planning requirements in § 177.820). Adding a cross-reference to COSRPs in part 130 for those HHFTs carrying petroleum oil provides better clarity for navigating PHMSA's regulations, consistent with the intent of the section. We have also added a cross-reference to the HHFT information sharing notification in § 174.312 for clarity. These cross-references do not impose new burdens on railroads.

C. Summary of HHFT Information Sharing Notification Comments (§ 174.312)

PHMSA received approximately 20 comments about the proposed HHFT information sharing requirements. These comments fall into several categories, including applicability, notification recipients, frequency of notification, data security, and confidentiality concerns. PHMSA also received several comments outside the scope of this rulemaking requesting advanced notification of all hazardous materials rail shipments or notification to various local entities following an incident. The Kentucky Emergency Response Commission supported the proposed requirements in § 174.312 as written in the NPRM.

PHMSA received a small number of comments on the appropriate quantity threshold at which the HHFT information sharing requirements would apply. These suggested thresholds included: One car of any hazardous material; any oil; any hazardous material in any quantity; and a general reduction in the number of cars triggering the notification requirements. NTSB stated that the HHFT applicability partly satisfies Safety Recommendation R–14–14 in that emergency response agencies would have access to periodic reports of flammable hazardous material commodities transported through their communities, but urged PHMSA to require all railroads to provide advanced notification to communities for all hazardous materials transported on a given route.

Generally, most comments concerning notification recipients agreed with supplying HHFT information to the SERCs and TERCs. Several commenters also supported SERCs and TERCs further disseminating information to the appropriate local government officials. IAFC suggested adding fusion centers as an additional entity to receive notifications, but clarified that fusion centers should not replace SERCs. In terms of TERCs specifically, two commenters suggested that we work closely with tribes and allow their leadership to determine the best approach. One comment from AAR requested that the final rule mandate a registration system for SERCs and TERCs to receive information. NTSB supported expanding the notification requirements to include LEPCs.

PHMSA received several comments about the frequency and type of information provided to SERCs and TERCs. IAFC agreed with the requirement for monthly updates and updates for when routes change a significant amount. They highlighted that receiving active, monthly notification was useful for emergency response planning by fire chiefs. AAR stated that the monthly reporting requirement would be redundant and asked that a new report should only be filed when there is a change in volume of 25 percent or greater. Commenters also requested more detailed notification of shipments either before or after incidents, including ''real-time notification'' of hazardous materials train consists. NTSB supported further inclusion of additional resources (*i.e.,* an emergency coordinator who participates in the local emergency planning process), additional notice of any operational changes that could affect emergency planning, and any information necessary to develop and implement local emergency plans.

The most discussed category was the topic of data security and confidentiality. PHMSA received several comments on this topic with commenters either asking for the information to be more widely available or requesting increased confidentiality measures. State governments, environmental organizations, and a private individual were in favor of keeping the information public. A local government, trade organizations, a carrier, and an emergency response organization were in favor of keeping information confidential. Both sides provided various reasoning for their given perspective. The Washington State Department of Ecology explained that the requirement to provide aggregate information weekly is ''consistent and complimentary with Washington law of aggregating crude rail information when releasing it to the public.'' The commenters advocating for this information to be public argued that making information private will put ''the SERC and TERC staff in a situation of undue legal jeopardy'' or cause confusion and delays in further providing information to appropriate entities. Commenters further supported public dissemination, as this information is not considered security sensitive information (SSI) by a number of States, right-to-know, and FRA's previous October 2014 Information Disclosure Notice.[33] Several comments mentioned FRA's determination in the October 2014 Information Disclosure Notice that crude-by-rail information required to be reported is not business confidential or proprietary information. Industry commenters, such as Union Pacific Railroad, advocated for this information to be withheld from the public. They argued that the proposed rule fails to meet the FAST Act requirement to identify rail information as sensitive, and expressed security concerns over the requested information being publicly available. The American Fuel & Petrochemicals Manufacturers (AFPM) specifically requested that the information be exempt from public disclosure—including state FOIA and sunshine laws—for anyone without need-to-know, due to concerns over security.

Some comments supported a mixed approach, supporting both greater public availability of data and increased security measures. One comment requested that PHMSA and FRA establish guidelines as to what information is considered non-public

[33] 79 FR 59892.

SSI. Another comment suggested that security and confidentiality should be controlled at the SERC level. Commenters explained that SERCs have experience properly controlling other sensitive information. Some commenters suggested that local governments should receive the notification, but sign non-disclosure agreements.

Response to Comments Regarding HHFT Information Sharing Notification (§ 174.312)

PHMSA disagrees that the applicability threshold should be lowered. Lowering the threshold is outside the scope of this rulemaking, and was not sufficiently supported by commenters. Additionally, a lower threshold may include non-unit trains in the requirement and significantly increase cost for small businesses. As such, the HHFT threshold captures the risk of unit trains and provides a consistent approach with the requirement to perform routing analysis. This applicability aligns with the FAST Act requirement to apply the information sharing provision to HHFTs. It also expands the applicability from the FAST Act to include Class II and III railroads to provide a unified approach to the risk posed by HHFTs.

We disagree with commenters that the proposed requirements are overly burdensome for ensuring SERCs, TERCs, and local responders receive the information contained in the notification. The entities included in the notification requirements align with the FAST Act. Furthermore, SERCs are already receiving the types of information specified in this requirement through the Emergency Order. The purpose of this notification is to actively inform communities about HHFTs which are transported through them. The routing notification requirements in § 172.820 already provide a method for communities to request information. The AAR Circular OT–55–P outlines a voluntary procedure whereby local emergency response officials and emergency planning organizations may request and obtain a list of the types and volumes of hazardous materials that are transported through their communities.[34] We also disagree with adding additional detailed information elements to the notification, as some of the suggestions by commenters for additional requirements exceed the scope of this rulemaking. Furthermore, PHMSA is addressing the FAST Act mandate in section 7302 to issue regulations that require real-time sharing of electronic train consist information for hazardous materials shipments in a separate rulemaking action.

We agree with AAR that omitting the language for a ''change of 25 percent or more'' may cause confusion in determining when use of a certification of no change is appropriate and that requiring monthly notifications is redundant. This is the standard used for the Emergency Order. Therefore, we are adopting a requirement to update the notification when changes in volume are greater than 25%.

We disagree with commenters that the approach to security and confidentiality is inadequate. We maintain that notification to SERCs, TERCs, or other State-delegated agencies for the purpose of sharing with appropriate local officials is sufficient. Adoption of the proposed language, ''If the disclosure includes information that railroads believe is security sensitive or proprietary and exempt from public disclosure, the railroads should indicate that in the notification,'' is sufficient to ensure confidentiality and security. The purpose of SERCs and TERCs is to share information with local planning authorities, and adopting commenter recommendations for more prescriptive measures to disseminate information both exceeds the scope of the proposed rulemaking and places an additional burden on states. We acknowledge that states may differ in their methods. Maintaining this approach provides flexibility to ensure that SERCs, TERCs, and other State-delegated agencies disseminate information in accordance with State laws and procedures. Furthermore, this approach will help guard against inadvertent public disclosure of protected materials by ensuring that the information that railroads believe to be confidential for business or security reasons is marked appropriately. Before fulfilling a request for information and releasing the information, States will be on notice as to what information the railroads consider inappropriate for public release.

The adopted information sharing notification elements include aggregated information, and analyses by DOT and DHS have indicated that the information elements in the notification are not considered SSI. Furthermore, railroads have not demonstrated specific prospective harm that would be caused by the release of such aggregated information. Commenters to the NPRM repeated the same previously raised concerns that the sharing of routing information for HHFTs required them to reveal proprietary business information. As discussed above, railroads argued that the Emergency Order routing information, if published or shared widely, could reveal information about customers. After considering the claim in an October, 2014 information collection notice, FRA concluded that the information would not be considered business confidential or SSI under Federal law. FRA's ''Proposed Agency Information Collection Activities; Notice and Request for Comments'' [35] noted that the railroads did not specifically identify any prospective harm caused by the sharing of this information. DOT's previous analysis concluded that the information shared by railroads does not qualify for withholding under Federal standards as business confidential information or SSI. DOT requires railroads to share aggregated information about the volumes of HHFTs that travel through a jurisdiction on a weekly basis. This information does not include customer information or other business identifying details. Further, it does not provide specifics about the timing of HHFT trains.

D. Summary of Initial Boiling Point Test Comments (§ 173.121)

PHMSA received five comments addressing the proposed incorporation by reference of the ASTM D7900 test method. The coalition comments from Scenic Hudson, Riverkeeper, et al. stated that the new test method should be mandatory. NTSB supported use of the test, but recommended that PHMSA remove other boiling point test options they consider to be less accurate and, further, mandate additional requirements for best method of classification, such as API RP 3000 and the report on sampling methods by Sandia National Laboratories. NTSB described adding the test as partly addressing NTSB Safety Recommendation R–14–6, which recommends testing and documentation for all hazardous materials. Industry commenters provided a more detailed description and recommendations related to the use of the test. Commenters additionally provided recommendations related to additional testing and sampling requirements for petroleum crude oil, which exceeded the scope of this rulemaking.

Both the AFPM and API stated that use of the test is not fully aligned with API RP 3000, pointing to differences between the API RP 3000 and HMR regarding sampling methods and specificity about when to use the test.

[34] *https://www.aar.org/boe.*

[35] 79 FR 59891 (October 3, 2014).

For example, API stated that ASTM D7900 was applicable only to stabilized crude oils, defined as having a Reid vapor pressure equivalent to or less than 82.7 kPa (12 psi). Newer versions of the API RP 3000 incorporate additional IBP tests for other crude oils. AFPM explains:

> [The API RP 3000 requires] conducting an IBP analysis based on the definition of IBP in ASTM D7169, both the ASTM D7169 and ASTM D7900 tests must be run. The results of both tests are merged to obtain a boiling point distribution curve for the crude oil. The IBP is then calculated in accordance with the calculation procedures set out in ASTM D7169 to arrive at an IBP consistent with the IBP as defined in ASTM D7169 . . . The recommended practice for sampling in API RP 3000 differs substantially from the sampling methods prescribed in ASTM D7900, which requires that sampling be conducted in accordance with ASTM D4057 or D4177.

Both AFPM and API supported adoption of the API RP 3000 but recommended incorporating specific, detailed language containing limitations or descriptions about when and how the test should be used, if adopted. API further recommended incorporation of additional standards for the collection of samples (*e.g.,* the API Manual of Petroleum Measurement Standards (MPMS) Chapter 8.1/ASTM D4057, API MPMS Chapter 8.5/ASTM D8009, or ASTM D3700). AFPM recommended including an exception that crude oil may be classified as Packing Group (PG) I without further testing for better harmonization with requirements of Transport Canada.

Response to IBP Test Comments (§ 173.121)

PHMSA mostly disagrees with commenters and is adopting the IBP test as proposed in the NPRM with the addition of the boiling point definition for clarity. The proposed rule included incorporation by reference of an additional initial boiling point test method, which would make no further changes to other testing and sampling requirements for petroleum products in § 173.41, § 173.120, or § 173.121. The NPRM did not propose requiring mandatory use of the ASTM D7900 test or incorporating additional standards, nor did it provide an exception from all other sampling and testing requirements in the HMR by providing a PG I designation. Such requirements would reduce flexibility of industry stakeholders to comply with test requirements.

Additionally, a more precise test to measure boiling point may provide a limited value, as it is unlikely to lead to a difference in classification of weathered and/or treated stable crude oils and may be unnecessarily costly to counter the limited outcome. However, PHMSA may consider incorporation of additional standards and further revising other sampling and testing criteria and methodology for petroleum crude oil in a future rulemaking action.

Overall, PHMSA further disagrees that adding limitations to the use of ASTM D7900 initial boiling point test is necessary to ensure shippers use the right test for their flammable materials. Currently, § 173.121 provides a list of initial boiling point tests. These tests do not apply to all Class 3 liquids; rather, shippers determine which test is most appropriate for their material. The full title of the test provided in § 173.121 is ''Petroleum products containing known flammable gases—Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography (ASTM D7900),'' which clearly describes the test is appropriately used for certain petroleum products. However, use of the ASTM D7900 requires understanding the definition of ''initial boiling point, when determining the boiling distribution using ASTM D7900, is the temperature at which 0.5 weight percent is eluted.'' This definition is included in the ASTM D7169, which is referenced inside the ASTM D7900. Therefore, we are adopting the proposed requirement and including the aforementioned definition. This provides sufficient information for shippers to follow the current classification procedures to select the most appropriate test for their samples.

VI. Incorporated by Reference

Section 171.7 lists all standards incorporated by reference into the HMR that are not set out in full text in the regulations. This final rule incorporates by reference the ASTM D7900–13^{e1}, Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography, 2013, available for interested parties to purchase in either print or electronic versions through ASTM's website at the following URL: *https://www.astm.org/Standards/D7900.htm.* The price charged for this standard at the time of publishing is $52.00. The price charged to interested parties helps cover the cost of developing, maintaining, hosting, and accessing these standards.

This publication (*i.e.,* test method) ensures a minimal loss of light ends for crude oils containing volatile, low molecular weight components (*e.g.,* methane) because it determines the boiling range distribution from methane through n-nonane. Incorporation of this publication (*i.e.,* test method) provides flexibility to use an industry best standard.

VII. Section-by-Section Review

Part 107

Administrative update to authorities to include 33 U.S.C. 1321(b)(6).

Section 107.301

Updates section to include reference to subchapter B to reflect administrative update to amended authority for COSRP regulations promulgated under 33 U.S.C. 1321(j). Updates reference to the Secretary's delegation of authority from § 1.53 of this title to § 1.97 of this title.

Section 107.305

Updates section to include reference to subchapter B to reflect administrative update to amended authority for COSRP regulations promulgated under 33 U.S.C. 1321(j).

Section 107.309

Updates section to include reference to subchapter B to reflect administrative update to amended authority for COSRP regulations promulgated under 33 U.S.C. 1321(j).

Section 107.311

Updates section to include reference to subchapter B to reflect administrative update to amended authority for COSRP regulations promulgated under 33 U.S.C. 1321(j).

Section 107.329

Adds new paragraph (c) to include reference to the administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4, for violations of COSRP regulations promulgated under 33 U.S.C. 1321(j).

Part 130

We are restructuring part 130 to establish the following subparts:

Subpart A—Applicability and General Requirements contains current §§ 130.1–130.21 with minor revisions and clarifications.

Subpart B—Basic Spill Prevention and Response Plans contains current §§ 130.31–130.33 with minor revisions to remove comprehensive plan requirements.

Subpart C—Comprehensive Oil Spill Response Plans is a new subpart with new requirements for COSRPs. The section number and titles have been updated for plain language as follows in Table 6:

TABLE 6—PART 130 SUBPART C—COMPREHENSIVE OIL SPILL RESPONSE PLANS SECTIONS

NPRM	Final rule
130.101 Applicability for comprehensive plans	130.100 Applicability for comprehensive oil spill response plans.
130.102 General requirements for comprehensive plans	130.105 Purpose and general format.
130.103 National Contingency Plan (NCP) and Area Contingency Plan (ACP).	130.110 Consistency with the National Contingency Plan.
	130.115 Consistency with Area Contingency Plans.
130.104 Information summary for comprehensive plans	130.120 Information summary.
130.105 Notification procedures and contacts for comprehensive plans.	130.125 Notification procedures and contacts.
130.106 Response and mitigation activities for comprehensive plans	130.130 Response and mitigation activities.
130.107 Training procedures for comprehensive plans	130.135 Training.
130.108 Equipment testing and drill procedures for comprehensive plans.	130.140 Equipment testing and exercise procedures.
130.109 Recordkeeping and plan update procedures for comprehensive plans.	130.145 Plan review, update, and recordkeeping procedures.
130.111 Submission and approval procedures for comprehensive plans.	130.150 Submission and approval procedures.
130.112 Response plan implementation for comprehensive plans	130.155 Implementation of comprehensive oil spill response plans.

Section 130.2

Paragraph (d) is updated to show that the requirements in § 130.31(b) have moved to subpart C. PHMSA does not propose any other changes to this section.

Section 130.5

The changes to the definitions section are adopted as proposed in the NPRM. The introductory text is reformatted, including moving the definition for ''Animal fat'' to the correct alphabetical order as proposed in the NPRM. Definitions for ''Maximum Potential Discharge,'' ''Oil Spill Removal Organization (OSRO),'' ''On-Scene Coordinator (OSC),'' ''Response activities,'' ''Response Plan,'' and ''Worst-Case Discharge'' are added as proposed in the NPRM. Definitions for ''Adverse Weather,'' ''Maximum Potential Discharge,'' ''Person,'' ''Petroleum Oil,'' and ''Worst-case discharge'' are revised as proposed in the NPRM. This final rule corrects an NPRM error in which OSRO used ''response'' rather than the correct term ''removal''. The IBR reference is corrected for the definition of ''Liquid,'' as proposed in the NPRM, and the definition is updated to remain consistent with the HMR. In response to comments on the NPRM, the proposed definitions for ''Environmentally Sensitive or Significant Areas'' and ''Response Zone'' have been further clarified in this final rule.

Section 130.31

This section is revised editorially as proposed in the NPRM to clarify that it applies to basic OSRPs and remove references to COSRPs.

Section 130.33

This section is revised as proposed in the NPRM to clarify that it only applies to basic OSRPs.

Section 130.100

This final rule establishes a new section to describe the applicability requirements for COSRPs. This section has been adopted as proposed in the NPRM with revisions for plain language to clarify requirements in response to comments. This includes moving the current applicability of COSRPs of 42,000 gallons per packaging from § 130.31 to § 130.100, and expanding the applicability of COSRPs to route segments in which railroads transport ''a single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist.'' This section also includes an exception proposed in the NPRM for oil that does not meet the definition of a Class 3 flammable or combustible liquid, and for tank cars carrying residue. Under this final rule, tank cars containing crude oil, fuel oil, petroleum distillates, diesel, and gasoline must be included when counting tank cars in the consist. However, mixtures that do not meet the criteria for Class 3 flammable or combustible material in § 173.120 of part 173, or that contain residue as defined in § 171.8 of subchapter C, are not required to be included when determining the number of tank cars transporting liquid petroleum oil. For example, waste water contaminated with petroleum oil or certain mineral oils may not meet the definition of a Class 3 flammable or combustible liquid. Additionally, oils which were already excepted from the applicability in part 130 by § 130.2(b) are not required to be counted for COSRPs. Therefore, COSRPs would not be required for ''any mixture or solution in which oil is in a concentration by weight of less than 10 percent;'' or for ''any petroleum oil carried in a fuel tank for the purpose of supplying fuel for propulsion of the transport vehicle to which it is attached,'' or for ''oil transport exclusively within the confines of a non-transportation-related or terminal facility in a vehicle not intended for use in interstate or intrastate commerce (see 40 CFR part 112, appendix A).''

Section 130.105

This final rule establishes a new section for general requirements for the overall development of a COSRP as proposed in the NPRM. This section includes general requirements for the plan format, such as development of a core plan, and geographic response zones and accompanying response zone appendixes. This section also adds permission for railroads to use State plans to meet the requirements of part 130 provided they maintain an equivalent or greater level of protection as the Federal standard.

Section 130.110

This final rule establishes a new section to require that COSRPs are certified for consistency with the NCP and demonstrate compliance through a list of minimum requirements. In response to comments, this section clarifies that the railroad must demonstrate a clear understanding of the ''Incident Command System and Unified Command.''

Section 130.115

This final rule establishes a new section to require COSRPs are certified for consistency with each applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP) and demonstrate compliance through a list of minimum requirements. This section is adopted as proposed in the NPRM, with edits for plain language and clarification for ESAs. This section also clarifies that the identification of ESAs and protection strategies are determined by reviewing and summarizing readily available ACPs, or RCPs when an ACP is not available.

Section 130.120

This final rule establishes a new section with requirements for COSRPs to include a front-page information summary. This section is adopted as proposed in the NPRM with minor edits for plain language.

Section 130.125

This final rule establishes a new section with requirements for the notification procedures and contact information that a railroad must include in a COSRP. This section is adopted as proposed in the NPRM with minor edits for plain language and clarification that communication between Qualified Individuals and appropriate Federal officials and persons providing response personnel and equipment, must be immediate.

Section 130.130

This final rule establishes a new section for railroads to describe the response and mitigation activities and the roles and responsibilities of participants in COSRPs. This section is adopted as proposed in the NPRM with minor edits for plain language and to clarify that appendix C of 33 CFR part 154 provides equivalent planning standards for use of OSROs classified under 33 CFR 154.1035 and 155.1035.

Section 130.135

This final rule establishes a new section requiring railroads to certify that employees are trained in accordance with the requirements of this section. This section is adopted as proposed in the NPRM with edits for plain language. In response to commenters, this final rule clarifies requirements for volunteers and adds requirements for the person acting as Incident Commander to be trained in ICS.

Section 130.140

This final rule establishes a new section with requirements for equipment testing to be consistent with the manufacturer's minimum requirements. This section is adopted as proposed in the NPRM, with edits for plain language and to update the USCG website.

Section 130.145

This final rule establishes a new section with requirements for exercise procedures consistent with current PREP requirements for COSRPs. This section is adopted as proposed in the NPRM, with edits for plain language and clarification. In response to commenters, this final rule replaces use of the term ''drill'' in the NPRM with ''exercise'' for consistency with the PREP guidelines.

Section 130.150

This final rule establishes a new section with requirements for recordkeeping, review, and submission of COSRPs. The NPRM proposed that railroads submit plans to FRA. The final rule designates PHMSA as agency receiving plans and updates this section with submission procedures applicable to PHMSA, including specifying options for electronic submission of plans. In response to commenters, this final rule clarifies that railroads may operate for two years upon submission of response plan to PHMSA and certification of appropriate resources, for better consistency with the CWA.

Section 130.155

This final rule establishes a new section to apply the current plan implementation requirements for COSRPs formerly under § 130.33. This section has been adopted as proposed with changes to the section numbering and title for plain language.

Part 171

Section 171.7

This section adds the ASTM D7900 standard to the list of ASTM materials incorporated by reference.

Part 173

Section 173.121

This section adds the ASTM D7900 standard to the list of initial boiling point tests in § 173.121(a)(2) that are incorporated by reference. This section adds a definition for initial boiling point when using the ASTM D7900 standard.

Part 174

Section 174.310

Part 174, subpart G, provides detailed requirements for transporting flammable liquids by rail. The HM–251 final rule added § 174.310 to this subpart to provide a consolidated list of requirements specific to transporting HHFTs. This final rule adds a new paragraph (a)(6) titled ''Oil spill response plans'' for clarity, to reference the part 130 requirements for HHFTs composed of trains carrying petroleum oil. A new paragraph (a)(7) titled ''Information sharing notification for emergency planning'' is added for consistency, to provide a reference to the new notification requirements in § 174.312. Although, the reference in (a)(7) was not proposed in the NPRM, no new requirements are being imposed.

Section 174.312

This final rule adds a new § 174.312 to subpart G of part 174 to require rail carriers that operate HHFTs to provide notifications to each applicable SERC, TERC, or other appropriate State-delegated agencies for further distribution to appropriate local authorities, upon request. Railroads may identify information that they believe is security sensitive or proprietary and exempt from public disclosure. These requirements are adopted as proposed, with minor edits for plain language and clarification. The frequency of update is also modified to address commenter concerns. This section specifies that the HHFT information sharing notification must include:

- A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction;
- The routes over which the HHFTs will operate;
- A description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172;
- At least one point of contact at the railroad (including name, title, phone number, and address) with knowledge of the railroad's transportation of affected trains (referred to as the ''HHFT point of contact''); and
- If a route is subject to the COSRPs, the notification must include a description of the response zones (including counties and States) and contact information for the Qualified Individual and alternate, as specified under § 130.104(a).

Railroads may provide the required notifications electronically or in hard copy and must update the notifications for changes in volume greater than 25%. The frequency of updates aligns with the Emergency Order. The NPRM proposed monthly updates or statement of 'no change.''

Each point of contact must be clearly identified by name or title in

organization and by contact role (*e.g.,* Qualified Individual, HHFT point of contact).

Adding this new HHFT information sharing notification to § 174.312 builds upon the information sharing framework for HHFTs started by expansion of the routing requirements in § 172.820 in the HM–251 final rule (80 FR 26644). Together, these requirements enable the railroads to work with State officials to ensure that safety and security planning is occurring. Under existing § 172.820(g) of the HMR, fusion centers and other State, local, and tribal officials with a need-to-know will continue to work with the railroads on routing and risk analysis information conducted pursuant to part 172, subpart I, for information that is deemed SSI. The HHFT notification in the newly established § 174.312 ensures that SERCs, TERCs, or other appropriate State agencies will routinely receive and share non-sensitive information from rail carriers regarding the movement of HHFTs in their jurisdictions that can aid local emergency responders and law enforcement in emergency preparedness and community awareness.

VIII. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321, also known as the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA 90), which directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore oil facilities to develop, submit, update, and in some cases, obtain approval of oil spill response plans. Executive Order 12777 delegated responsibility to the Secretary of Transportation for certain transportation-related facilities. The Secretary delegated to PHMSA the authority to promulgate regulations, 49 CFR 1.97(c), and to review and approve OSRPs.[36] A Memorandum of Understanding (MOU) between the DOT and EPA further establishes jurisdictional guidelines for implementing OPA 90 (36 FR 24080). The changes to part 130 in this rule address minimizing the impact of discharge of oils into or on the navigable waters or adjoining shorelines.

This final rule is also published under the authority of the Federal hazardous materials transportation law, 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The changes in this rule to 49 CFR parts 171, 173, and 174 address safety and security vulnerabilities regarding the transportation of hazardous materials in commerce. The requirements proposed in § 174.312 are also mandated by the FAST Act (Pub. L. 114–94).

The Federal railroad safety laws (49 U.S.C. 20103) provide the Secretary with authority over all areas of railroad transportation safety. The Secretary delegates this authority to the FRA in 49 CFR 1.89. Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program (49 CFR parts 200–244) addressing issues such as railroad track, signal systems, railroad communications, and rolling stock. The FRA inspects railroads and shippers for compliance with both FRA and PHMSA regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). However, this final rule is not an economically significant regulatory action as defined by section 3(f)(1) under Executive Order 12866, since it does not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A Regulatory Impact Analysis (RIA) is available for review in the public docket for this rulemaking and summarized below. Please see the RIA for more details on the benefits and costs of the final rule.

C. Executive Order 13771

This final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this rulemaking can be found in the rule's economic analysis.

D. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism,'' (64 FR 43255; Aug. 10, 1999), and the presidential memorandum on ''Preemption,'' (74 FR 24693; May 22, 2009). Executive Order 13132 requires PHMSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' These include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency may not issue a regulation that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments or the agency consults with state and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts state law, the agency, where practicable, seeks to consult with state and local officials in the process of developing the regulation.

This final rule 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. The final rule amends the existing title 49 of the Code of Federal Regulations in three areas. First, it updates part 130 by expanding the applicability of COSRPs to unit trains of flammable liquid petroleum oil, and by providing more detailed requirements for COSRPs. Second, it updates part 174 by requiring railroads to share additional information with state and tribal emergency response organizations. Finally, it updates part 173 to incorporate by reference an additional initial boiling point test for flammable liquids as an acceptable testing alternative to the current list of boiling point tests.

The final rule does not impose any new requirements with effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among government entities. In addition, PHMSA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

PHMSA issues this final rule under the following statutory authorities: The Hazardous Materials Transportation Act (HMTA), the Federal Railroad Safety Act (FRSA), and the Clean Water Act as

[36] The Secretary has delegated the authority to review approve OSRPs by memorandum. Section 1.97 will be updated to reflect this delegation as part of the Department's next delegations rulemaking.

it is amended by the Oil Pollution Act of 1990.

The HMTA provides that a State law or Indian tribe requirement is preempted in the following cases: Compliance with both the State law or Indian tribe requirement and the Federal requirement is not possible; the State law or Indian tribe requirement creates an obstacle to accomplishing or executing the Federal requirement; or where a Federal requirement has covered the subject and the state law or Indian requirement is not substantively the same. Covered subjects under the HMTA include:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials and other written hazardous materials transportation incident reporting involving state or local emergency responders in the initial response to the incident; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

Under the FRSA, ''[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.'' With narrow exceptions for essentially local safety or security hazards, states may not ''adopt or continue in force a law, regulation, or order related to railroad safety'' once the ''Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement.'' (33 U.S.C. 20106(a)(2)). This standard applies to Federal regulations governing the transportation of hazardous materials by railroad, even when PHMSA or another agency promulgates those regulations.

OPA 90 (codified into the CWA) provides the statutory authority for the oil spill response planning portions of this final rule. Regarding the changes to oil spill response planning requirements in 49 CFR part 130, Federal regulation under 33 U.S.C. 1321 accommodates regulation by States and political subdivisions. Pursuant to 33 U.S.C. 1321(o)(2), states or political subdivisions are not preempted by the Federal oil spill requirements ''from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.''

As PHMSA noted in the NPRM, the preemption language of 33 U.S.C. 1321 protects states' abilities to regulate requirements, liabilities, and removal activities with respect to the discharge of oil or hazardous substances. Elements of state oil spill response plan legislation may be preempted under the preemption standard established by FRSA and HMTA if the state legislation imposes railroad safety or hazardous materials containment requirements.

PHMSA received several comments related to the NPRM's preemption discussion. These comments include several submissions from states in support of the proposition that this final rule does not preempt states' abilities to impose oil spill response requirements on entities, including railroads. Several states, including but not limited to Washington, California, and Minnesota, commented in support of the preemption standards discussed in the NPRM.

Some commenters provided detailed explanations of the distinction between hazardous materials and rail safety regulations under those statutory authorities and the CWA's preemption standard. For example, the Pacific States and British Columbia Oil Spill Task Force (Task Force) noted that FRSA and HMTA may preempt State laws that focus on rail safety, but that states retain CWA authority to impose oil spill planning requirements. They noted that response plans are not relevant to traditional railroad safety or operational requirements. Oil spill response planning pursuant to the CWA is designed to minimize the environmental harm of spilled oil reaching state waters independent of the train and its normal operation. The Task Force supports PHMSA's continued reliance on the Clean Water Act's preemption standards and national framework of federal and state action. In another example, the coalition comments from organizations including Riverkeeper, the Center for Biological Diversity, Earthjustice, Scenic Hudson, Stand.earth, Sierra Club, the National Wildlife Federation, Waterkeeper Alliance, Lake Champlain Committee, Vermont Natural Resources Council, NY/NJ Baykeeper, Little River Waterkeeper, Lake Pend Oreille Waterkeeper, Snake River Waterkeeper, Puget Soundkeeper Alliance, Communities for a Better Environment and several local riverkeeper and baykeeper organizations discussed 33 U.S.C. 1321(o)(2) of the Oil Pollution Act's as follows:

> Under OPA, state and local authorities may impose any additional liabilities and requirements regarding oil spills and impose their own financial penalties for any legal violations related to oil spills. This broad non-preemption provision therefore covers more than mere oil spill planning requirements, as this notice of proposed rulemaking suggests. Any state and local laws that impose oil spill-related requirements, liabilities, or financial penalties on crude-by-rail owners or operators are expressly preserved under OPA and cannot be subject to preemption under the FRSA or HMTA.

PHMSA also received comments from railroad trade associations requesting that PHMSA reverse its initial preemption discussion and find that the Federal standards in 49 CFR part 130 preempt state oil spill response plans. AAR argued that efforts in Washington and California to promulgate state-specific requirements and control rail operations are creating a patchwork of different and potentially conflicting requirements across the United States that will overburden the railroads. The AAR opined that state oil spill response plan legislation is preempted under the preemption standard established by FRSA, HMTA, and the ICC Termination Act. Recent efforts by states to promulgate differing state-specific requirements demonstrate the need for a single Federal standard to avoid a patchwork of potentially conflicting requirements across the United States that will overburden the railroads and impede commerce. ASLRRA commented in agreement with AAR that PHMSA's preemption of State rules is critical to prevent unnecessary duplication, inefficiency, and confusion to the rail industry. ASLRRA recommended that PHMSA standards should preempt all current and future State rules requiring oil spill response plans for the rail industry.

After evaluating the comments on the issue of Federal preemption and the permissibility of state oil spill response planning requirements for railroads, PHMSA continues to believe that the discussion in the proposed rule accurately states the application of the existing statutory authorities. The Clean Water Act allows for states to regulate requirements, liabilities, and removal activities with respect to the discharge of oil or hazardous substances, including oil spill response planning requirements; however, any state or

local regulation of railroad safety standards or hazardous materials containment or communication standards under the guise of oil spill response planning will be preempted under FRSA and HMTA.

E. Executive Order 13175

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249; Nov. 9, 2000) requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that have tribal implications. Agencies must determine whether a proposed rulemaking has tribal implications, which include any rulemaking that imposes ''substantial direct effects'' on one or more Indian communities, on the relationship between the Federal Government and Indian tribes, or on the distribution of power between the Federal Government and Indian tribes. Further, to the extent practicable and permitted by law, agencies cannot promulgate two types of rules—(1) rules that have tribal implications that impose substantial direct compliance costs on Indian tribal governments and that are not required by statute, and (2) rules that have tribal implications and that preempt tribal law—unless they meet certain conditions.

PHMSA is committed to tribal outreach and engaging tribal governments in dialogue. In the NPRM, PHMSA solicited comments on potential tribal impacts in an effort to capture tribal concerns as part of the regulatory process. Additionally, PHMSA regularly conducts outreach efforts. For instance, PHMSA representatives attended the National Joint Tribal Emergency Management Conference in September 2016 and the Northwest Tribal Emergency Management Conference in May 2016. In the spirit of Executive Order 13175, and consistent with DOT Order 5301.1, PHMSA will be continuing outreach to tribal officials independent of our assessment of the direct tribal implications of this final rule.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

PHMSA must consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities,'' which include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

To ensure potential impacts of rules on small entities are properly considered, PHMSA in coordination with the FRA, developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the RFA.

The RFA and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

After subjecting the rule to public comment, the Agency is required by E.O. 13272 to assess the comments received by small entities and the public and prepare a final regulatory flexibility analysis (FRFA) which address a series of topics (presented below) regarding the rule's expected impacts on small entities affected.

Under the RFA at 5 U.S.C. 604(a), each final regulatory flexibility analysis is required to address the following topics:

(1) A statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the 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;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

(7) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

The RFA requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposal that accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities. 5 U.S.C. 603(c). In this instance, none of the alternatives accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities.

(1) Need for, and Objectives of, the Rule

PHMSA, in coordination with the FRA, is issuing this final rule in order to improve response readiness and mitigate effects of rail incidents involving petroleum oil and certain HHFTs. This is necessary due to the expansion in U.S. energy production, which has led to significant challenges for the country's transportation system. This final rule has requirements in two areas as shown below: Section I, Subsection A (''Oil Spill Response Plans'') and Subsection B (''Information Sharing'').[37] The first requirement modernizes the Comprehensive Spill Plan requirements. 49 CFR part 130. Additionally, this final rule requires railroads to share additional information with state and tribal emergency response organizations (*i.e.,* SERCs and TERCs) to improve community preparedness. The requirements of this final rule work in conjunction with the requirements adopted in the HHFT Final Rule (80 FR 26644) in order to continue the comprehensive approach toward ensuring the safe transportation of energy products and mitigating the consequences of such accidents should they occur. PHMSA is addressing below the potential impacts on small entities with the final rule requirements for

[37] This rulemaking also proposes incorporation and the voluntary use of the initial boiling point (IBP) test (ASTM D7900) to determine classification and packing group for Class 3 Flammable liquids. We note that the incorporation of API RP 3000 and consequently ASTM D7900 will not replace the currently authorized testing methods, rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate PG assignment. This provision would not pose any impacts on small entities.

response plans and information sharing.[38]

(A) Oil Spill Response Plans

PHMSA is promulgating this final rule in response to recent train accidents involving the derailment of HHFTs. Shipments of large volumes of liquid petroleum oil pose a significant risk to life, property, and the environment. PHMSA has identified several recent derailments to illustrate the circumstances and consequences of derailments involving petroleum oil transported in higher-risk train configurations: Plainfield, IL (July 2017); Money, MS (May 2017); Mosier, OR (June 2016); Heimdal, ND (May 2015); Galena, IL (March 2015); Mt. Carbon, WV (February 2015); La Salle, CO (May 2014); Lynchburg, VA (April 2014); Vandergrift, PA (February 2014); New Augusta, MS (January 2014); Casselton, ND (December 2013); Aliceville, AL (November 2013); and Parkers Prairie, MN (March 2013).

For example, on December 30, 2013, a train carrying crude oil derailed and ignited near Casselton, North Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 7, 2013, a train carrying crude oil to the Gulf Coast from North Dakota derailed in Aliceville, Alabama, spilling crude oil in a nearby wetland and igniting into flames. These train accidents involving derailments of HHFTs transporting crude oil resulted in discharges of petroleum oil that harmed or posed a threat of harm to the nation's waterways.

Of note here is the NTSB's Safety Recommendation R–14–5,[39] which requested that PHMSA revise the spill response planning thresholds prescribed in 49 CFR part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. In this recommendation, the NTSB raised a concern that, ''[b]ecause there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes.'' In light of these accidents and NTSB Recommendation R–14–5, PHMSA has re-examined whether it is more appropriate to consider the train consist, rather than just the individual tank car, when setting the threshold for comprehensive OSRPs, and determined that such consideration is appropriate. The revisions included in the final rule expand the applicability of the comprehensive OSRP requirement. PHMSA holds that improved oil spill response planning will in turn improve the actual response to future derailments involving petroleum oil and lessen the negative impacts to the environment and communities.

On June 17, 1996, RSPA published a final rule issuing requirements that meet the intent of the Clean Water Act. This rule adopted requirements for packaging, communication, spill response planning, and response plan implementation intended to prevent and contain spills of oil during transportation. Under these current requirements, railroads are required to complete a basic OSRP for oil shipments in a package with a capacity of 3,500 gallons or more, and a comprehensive OSRP is required for oil shipments in a package containing more than 42,000 gallons (1,000 barrels).

Currently, most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic OSRP requirement of 49 CFR 130.31(a) since most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive OSRP for shipment of oil was only required when the quantity of oil is greater than 42,000 gallons per tank car. Accordingly, the number of railroads required to have a comprehensive OSRP was much lower, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a car.[40]

The final rule expands the applicability of comprehensive OSRPs based on thresholds of crude oil that apply to the train consist. Specifically, the final rule expands the applicability for OSRPs so that no person may transport an HHFT quantity[41] of liquid petroleum oil unless that person has implemented a comprehensive OSRP.

Each railroad subject to the final rule must prepare and submit a comprehensive OSRP that includes a plan for responding, to the maximum extent practicable, to a worst-case discharge and to a substantial threat of such a discharge of oil. The OSRP must also be submitted to the PHMSA, where it will be reviewed and approved by PHMSA personnel.

The changes respond to commenter requests for requirements for more detailed guidance and provide a better parallel to other federal oil spill response plan regulations promulgated under the OPA 90 authority. A full summary of the changes to the plan requirements are described in the final rule. Each comprehensive plan must include.[42] I. Core Plan: A core plan includes an information summary, as required in 49 CFR 130.105, and any components which do not change between response zones. Each plan must:

- Use and be consistent with the core principle of the National Incident Management System (NIMS) including the utilization of the Incident Command System (ICS):
- Include an information summary as required by §§ 130.105 and 130.120.
- Certify that the railroad reviewed the National Contingency Plan (NCP) and each applicable Area Contingency Plan (ACP) and that its response plan is consistent with the NCP and each applicable ACP and follows Immediate Notification procedures, as required by §§ 130.110 and 139.115.
- Include notification procedures and a list of contacts as required in § 130.125.
- Include response and mitigation activities and resources as required in § 130.130.
- Certify that applicable employees were trained per § 130.135.
- Describe procedures to ensure equipment testing and a description of the exercise program per § 130.140
- Describe plan review and update procedures per § 130.145.
- Submit the plan as required by § 130.150.

II. Response Zone Appendix: For each response zone, a railroad must include a response zone appendix to provide the information summary, as described in 49 CFR 130.120, and any additional components of the plan specific to the

[38] We note that the incorporation of API RP 3000, which contains the ASTM D7900 test will not replace the currently authorized initial boiling point testing methods, but rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate packing group assignment. This requirement will impose no new costs.

[39] *http://www.ntsb.gov/safety/safety-recs/recletters/R-14-004-006.pdf.*

[40] The 2014 AAR's Universal Machine Language Equipment Register numbers showed five tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

[41] An HHFT exists when a train has a block of 20 tank cars or 35 tank cars dispersed throughout the train that are loaded with a Class 3 flammable liquid.

[42] The following text is provided as an overview of the rule and does not replace regulatory text included in the NPRM.

response zones. Each response zone appendix must identify:

- A description of the response zone, including county(s) and state(s);
- Identification of any environmentally sensitive areas along the router per § 130.115; and
- Identification of the location where the response organization will deploy and the location and description of equipment required by § 130.130.

In addition, the final rule requires plan holders to identify an OSRO, provided through a contract or other approved means, to respond to a worst-case discharge within 12 hours.

(B) Information Sharing

On May 7, 2014, DOT issued Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067,[43] which required each railroad transporting 1,000,000 gallons or more of Bakken crude oil in a single train in commerce within the U.S. to provide certain information in writing to the SERC for each state in which it operates such a train. In the HM–251 (RIN 2137–AE91) NPRM published in 2014 (79 FR 45015; Aug. 1, 2014), PHMSA proposed to codify and clarify the requirements of the Order in the HMR and requested public comment on the various facets of that proposal. Unlike many other requirements in the August 1, 2014 NPRM, the notification requirements were specific to a single train that contains one million gallons or more of UN 1267, Petroleum crude oil, Class 3, sourced from the Bakken shale. In the HHFT Final Rule, PHMSA did not adopt the separate notification requirements proposed in the NPRM and instead relied on the expansion of the existing route analysis and consultation requirements of § 172.820 to include HHFTs to satisfy information sharing needs.

In response to the FAST Act and DOT's commitment to codifying the Order involving information sharing, we are requiring in this HM–251B final rule to add new § 174.312 for information sharing provisions to the additional requirements for transportation of flammable liquids by rail. This addition creates a tiered approach to information sharing, whereas fusion centers will continue to act as the focal point for risk analysis information deemed SSI under the routing analysis in § 172.820 and SERCs and TERCs will actively be provided with non-sensitive security information that can aid in emergency preparedness and community awareness. The final rule requirements provide emergency responders with an integrated approach to receiving information about HHFTs.

As required by this final rule, the notification must meet the following requirements:

- A reasonable estimate of the number of HHFT that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction;
- The routes over which the HHFTs will operate;
- A description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172 of this subchapter;
- An HHFT point of contact: At least one point of contact at the railroad (including name, title, phone number and address) related to the railroad's transportation of affected trains;
- If a route is additionally subject to the comprehensive spill plan requirements, the notification must include a description of the response zones (including counties and states) and contact information for the qualified individual and alternate, as specified under § 130.104(a);
- Railroads must update the notifications for changes in volume greater than 25%.
- Notifications and updates may be transmitted electronically or by hard copy.
- Each point of contact must be clearly identified by name or title and role (*e.g.,* qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles.
- Copies of HHFT notifications made must be made available to the Department of Transportation upon request.

The required changes build upon the requirements adopted in HHFT Final Rule to continue to the comprehensive approach to ensuring the safe transportation of energy products.

The Secretary has the authority to prescribe regulations for the safe transportation, including the security, of hazardous materials in intrastate, interstate, and foreign commerce (49 U.S.C. 5103(b)) and has delegated this authority to PHMSA via 49 CFR 1.97(b).

(2) A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made in the Proposed Rule as a Result of Such Comments

In response to the NPRM, PHMSA received several comments on whether regulatory relief for oil spill response plans may be appropriate for certain small businesses (*i.e.,* short lines). As discussed in the Section B ''Comment Summary'' of this rulemaking, most commenters supported regulations based on the risk, quantity, and type of oil, regardless of business size.

The American Short Line and Regional Railroad Association (ASLRRA) provided a global rulemaking comment which questioned whether the rulemaking ''provides either a meaningful or operationally sustainable path to addressing safety, particularly from a small business perspective.'' ASLRRA also noted that Class III railroads ''meet the economic criteria established for inclusion in 49 CFR 1201.1'' and suggested requirements under the under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (''SBREFA''), apply along with the RFA. ASLRRA did not provide any data analysis of the impact to Class III railroads. Their comments focused on three topics: (1) That short lines be exempt from comprehensive OSRP requirements; (2) that it should be permissible under the regulations for a short line to be covered by Class I comprehensive OSRPs when the short line is effectively a tenant of the Class I railroad; and (3) that Federal OSRP requirements should preempt State level OSRP requirements.

On point (1), PHMSA maintains that Class II or III railroads transporting petroleum oil and HHFTs are transporting materials that pose the same risk to communities as Class I railroads, and therefore should not be excluded from the rulemaking. The Agency received several comments to this effect from environmental organizations, members of the general public, and certain State governments. These comments generally supported the concept of basing OSRP requirements on the quantity and type of oil being transported, and risk, rather than entity size. PHMSA believes the final rule is an appropriate balance between risk mitigation and cost and ensures all entities that are at risk for a substantial oil spill are covered by the requirements of the final rule regardless of size.

On point (3) The ''Executive Order 13132, ''Federalism'' discussion in this section provides an analysis and response to comments related to issues for federal preemption.

Finally, on point (2), PHMSA does not believe that the requirements of the final rule preclude Class I railroads from assisting Class III entities with developing comprehensive oil spill response plan. Nothing in OSRP

[43] *http://www.dot.gov/briefing-room/emergency-order.*

regulations prohibit Class I railroads from providing support to Class III Railroads to develop a plan or to prohibit resource sharing between railroads. There are large parts of plans (*e.g.* Identification of environmentally sensitive areas or sharing of qualified individuals) for which a Class I could provide the Class III with assistance. Another example would be the Class III including documentation, under an agreement with a Class I, of a ''contract or other means'' demonstrating they have permission to use the Class I's response resources. Under the COSRP requirements adopted in this rulemaking, Class I railroads may choose to lessen the burden for Class III railroads through resource sharing agreements or by providing plan development information for overlapping response action plans. Nothing in the regulations precludes Class I railroads from assisting short lines in developing a plan or precludes one railroad from utilizing resources provided by another railroad through contract or other means; however, both railroads would be subject to submitting a plan to ensure the responsibilities are clearly delineated.

The ASLRRA also contends that PHMSA should have consulted with the Small Business Administration's Advocacy Office. PHMSA does not believe such consultation is necessary give the level of impacts and number of entities impacted by the final rule. The ASLRRA comments did not provide any specific information on the cost to develop comprehensive OSRPs, number of entities affected, or a comparison of costs to average operating margins or total revenue. The cost impacts on small entities are described more fully below in the context of the average revenue for Class III railroads.

(3) The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Changes Made to the Proposed Rule in the Final Rule as a Result of the Comments

PHMSA did not receive any comments filed by the chief counsel for Advocacy of the Small Business Administration and hence has not made any changes as a result of comments from that office.

(4) A Description of and an Estimate of the Number of Small Entities To Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The universe of the entities considered in this FRFA generally includes only those small entities that can reasonably expect to be directly regulated by the regulatory action. Short line railroads are the types of small entities potentially affected by this final rule.

A ''small entity'' is defined in 5 U.S.C. 601(3) as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Title 49 U.S.C. 601(4) likewise includes within the definition of small entities non-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. Additionally, 5 U.S.C. 601(5) defines as small entities governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a ''for-profit'' railroad business firm may be, and still be classified as a small entity, is 1,500 employees for ''line haul operating railroads'' and 500 employees for ''switching and terminal establishments.''

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final Statement of Agency Policy that formally establishes small entities or small businesses as being railroads, contractors, and hazardous materials offerors that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues,[44] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. 68 FR 24891 (May 9, 2003) (codified as appendix C to 49 CFR part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. PHMSA is using this definition for the rulemaking.

Railroads

Not all small railroads would be required to comply with the provisions of this rule. Most of the approximately 579 small railroads[45] that operate in the United States do not transport hazardous materials.[46] Based on the requirements of this final rule, the entities potentially affected by requirement are as described below:

(A) Oil Spill Response Plans

For determining the entities that would be affected by the requirements of this rulemaking, PHMSA used the configuration of trains contained in the definition of ''HHFT'' as it applies to petroleum oil, established in the HHFT Final Rule—defined as a train hauling 20 or more carloads of flammable liquid in a continuous block, or 35 or more carloads of crude oil throughout the train. PHMSA and FRA estimated that 55 small railroads transport crude oil in HHFTs and therefore could potentially be affected by this rule. This estimate was formulated using FRA's extensive expertise in rail operations, knowledge of the STB Waybill Data, and outreach to the FRA regional offices in 2013 to collect information on small carriers shipping crude oil.

Therefore, this rule would impact 9.5 percent of the universe of 579 small railroads. The Agency attempted to update this number in the interim between the NPRM and final rule but, working in cooperation with FRA, was unable to identify data that would enable a re-estimation of the number of entities affected by the rule, because not all Class III railroads submit carload data to the STB for inclusion in the waybill sample. The volume of crude shipped by rail has declined significantly since publication of the NPRM, and one of the effects of this decline in volume shipped by rail may be that some Class III railroads have stopped shipping crude oil in the interim.

(B) Information Sharing

The applicability of this requirement is derived from the information published in the HHFT Final Rule. Specifically, the definition of a High-Hazard Flammable Train and the information sharing portion of the routing requirements are related to this final rule. The HHFT Final Rule defined ''High-Hazard Flammable Train'' as a continuous block of 20 or more tank cars in a single train or 35 or more cars

[44] For 2012 the Surface Transportation Board (STB) adjusted this amount to $36.2 million.

[45] Although there are approximately 738 small railroads in existence, a portion of these railroads do not haul freight and hence would not be affected entities. PHMSA estimates the number of small entities that haul freight and hence might be affected by OSRP requirements to be 579 entities.

[46] Short Line and Regional Railroad Association. 2017. ''Short Line and Regional Railroad Facts and Figures.''

dispersed through a train loaded with a flammable liquid.

This definition also served as the applicable threshold of many of the requirements in the HHFT rulemaking, including routing requirements. Section 172.820 prescribes additional safety and security planning requirements for transportation by rail. In the HHFT Final Rule, the applicability for routing requirements in § 172.820 were revised to require that any rail carrier transporting an HHFT comply with the additional safety and security planning requirements for transportation by rail. The routing requirements adopted in the HHFT Final Rule are related to the NPRM, as the final rule requirements will create a tiered approach to information sharing; whereas fusion centers will continue to act as the focal point for risk analysis information deemed SSI in § 172.820, SERCs and TERCs will actively be provided with non-sensitive security information in the HHFT notification that can aid in emergency preparedness and community awareness in § 174.312.

The universe of affected entities for the information sharing requirements is different than the number of entities affected under the comprehensive response plan requirement. The applicability of this requirement is derived from the information published in the HHFT Final Rule. Specifically, the definition of an HHFT and the information sharing portion of the routing requirements are related to the NPRM. The number of small entities impacted under this requirement is different from the number of entities impacted under the comprehensive OSRP requirement due to the different applicability of these two requirements. In particular, the comprehensive OSRP requirement applies to HHFTs transporting crude oil (and potentially other petroleum oils), while the information sharing requirement applies to HHFTs transporting both crude oil and ethanol (and potentially other Class 3 flammable liquids). As described under the impact on the small entities section with the routing requirements in the HHFT Final Rule, there are 160 affected small entities under the routing requirements. Thus, the requirement in this final rule could potentially affect 160 small railroads transporting flammable liquids in HHFTs. Therefore, this rule would impact 27.6 percent of the universe of 579 small railroads.

Again the Agency was unable to identify data that would enable us to adjust the number of entities affected in the interim between the NPRM and final rule.

(5) A Description of the Projected 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

For a thorough presentation of cost estimates, please refer to the draft RIA, which has been placed in the docket for this rulemaking. PHMSA is addressing below the two requirements areas in this final rule, Oil Spill Response Plans and Information Sharing.

(A) Oil Spill Response Plans

This rule modernizes the requirements by changing the applicability for comprehensive oil spill response plans and clarifying the comprehensive plan requirements. The final rule expands the applicability of comprehensive OSRPs to railroads transporting a single train of 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist. These railroads, that are currently required to develop a basic plan, are now required to develop a comprehensive plan.

PHMSA describes below the impact on the small railroads that would be required under the final rule which requires any railroad carrying 20 or more tank cars of liquid petroleum oil in a continuous block or 35 such cars on a single train to submit a comprehensive OSRP. The total cost estimate with the requirements for small railroads is conservative, when compared to the cost estimates of the other several alternatives evaluated by PHMSA. PHMSA evaluated several alternatives related to the threshold values for the universe of affected entities that would be required to submit a comprehensive response plan.[47] For additional information about the development of these cost estimates, the specific differences between a basic and comprehensive OSRP including the estimated cost per railroad by railroad class please refer to the final RIA, which has been placed in the docket for this rulemaking. For determining the entities that would be affected by the required threshold, PHMSA used the definition HHFT from the HHFT Final Rule.[48] PHMSA narrowed the affected entities to only include railroads that transported crude oil and, in consultation with FRA, revised the estimated number of Class III carriers that would be subject to the rulemaking. Based on this assessment, PHMSA estimates there are 73 railroads (7 Class I, 11 Class II, and 55 Class III) that would be subject to this final rule.

I. Core Plan: A core plan includes an information summary, as adopted in § 130.105, and any components which do not change between response zones.

II. Response Zone Appendix: For reach response zone, a railroad must include a response zone appendix to provide the information summary, as required in § 130.120, and any additional components of the plan specific to the response zones.

In addition, the final rule requires plan holders to identify an OSRO, provided through a contract or other approved means, to respond to a worst-case discharge within 12 hours.

PHMSA has identified several categories of costs related to the development and implementation of a comprehensive response plan. Those costs include the following: Plan development, submission, and maintenance; contract fees for designating an OSRO; training and drills; and plan review and approval. For additional information about the development of these cost estimates, please refer to the draft RIA, which has been placed in the docket for this rulemaking.

As noted in section 4 of this FRFA, approximately 55 small railroads carry crude oil in train consists large enough that they would potentially be affected by this rule.

PHMSA considers the average annual cost per railroad relevant for the purposes of this analysis in addition to presenting first year and subsequent year cost per railroad due to the nature of frequency of requirements with the development of a comprehensive plan, which varies between annual and every five years. The total undiscounted cost with the plan for the small railroads is $15,221,806 over the ten-year period of the analysis. PHMSA estimates the total cost to each small railroad to be $51,020 in the first year and an annual average cost of $25,082 in subsequent years, taking into account the costs growing

[47] Under each of these alternatives, the number of Class I and Class II railroads affected by the proposed thresholds does not change. However, the number of Class III railroads that would be subject to the proposed rule ranges from 55 to 20 railroads. Based on evaluation of the 2013 Waybill Sample data and in consultation with the FRA, PHMSA determined that 55 small railroads are the largest number of small railroads that is subject to the proposed option requirements. Please, refer to the draft RIA for additional information regarding the number of impacted entities under the other several alternatives.

[48] 80 FR 26643–26750 (May 8, 2015).

with increases in real wages.[49] Small railroads have annual operating revenues that range from $3 million to $20 million. A recent publication on from the ASLRRA states that average freight revenue for Class III railroads is $4.75 million per year.[50] Thus, the costs associated with this requirement amount to roughly one percent or less of the railroad's annual operating revenue (in the initial year when costs are highest the amount is 1.07 percent of average annual revenue, and falls to an average of 0.53 percent in subsequent years and is 0.58 percent for the full ten year analysis period, assuming revenue is roughly stable at $4.75 million over the analysis period). PHMSA realizes that some small railroads will have lower annual revenue than $4.75 million. However, PHMSA is confident that this estimate of total cost per small railroad provides a good representation of the cost applicable to small railroads, in general.

In conclusion, PHMSA believes that although some small railroads will be directly impacted, the impact will amount to roughly one percent or less of an average small railroad's annual operating revenue. PHMSA plans to publish a Compliance Guide to explain the regulations to small businesses.

(B) Information Sharing

In response to the FAST Act and DOT's commitment to codifying the Order involving information sharing, in this final rule we are adding new information sharing provisions to the additional safety and security planning requirements for transportation by rail in a new § 312. As discussed previously, § 172.820(g) provides the requirements for rail carrier point of contact on routing issues for SSI. In this final rule we add § 174.312 to add additional information sharing requirements. A rail carrier of a HHFT as defined in § 171.8 of this subchapter must provide the following notification to SERC, TERC, or other appropriate state delegated entities in which it operates. Information required to be shared must consist of the following:

- A reasonable estimate of the number of affected HHFTs that are expected to travel, per week, through each county within the state.
- The routes over which the affected trains will be transported.
- A description of the materials shipped and applicable emergency response information required by subparts C and G of part 172 of this subchapter.
- At least one point of contact at the railroad (including name, title, phone number and address) responsible for serving as the point of contact for the SERC, TERC, and relevant emergency responders related to the railroad's transportation of affected trains.
- The information summary elements (*e.g.* response zone description and contact information for qualified individuals) for the comprehensive oil spill response plan required by § 130.120(c), when applicable.
- Railroads must update notifications made under § 174.312 for changes in volume greater than 25%.
- Copies of railroad notifications made under § 174.312 must be made available to DOT upon request.

Approximately 160 small railroads carry crude oil and ethanol in train consists large enough that they would potentially be affected by this rule. PHMSA estimates the total cost of information sharing to each small railroad to be $7,758 in the first year and $2,365 for subsequent years, with costs growing with increases in real wages.[51]

Small railroads' annual operating revenues range from $3 million to $20 million. A recent publication on from the ASLRRA states that average freight revenue for Class III railroads is $4.75 million per year.[52] One percent of average annual revenue per small railroad is $47,500. Thus, the costs associated with this requirement amount to less than one percent of the railroad's annual operating revenue. PHMSA realizes that some small railroads will have lower annual revenue than $4.75 million. However, PHMSA is confident that this estimate of total cost per small railroad provides a good representation of the cost applicable to small railroads, in general.

Total Burden on Small Entities

TABLE 7—SUMMARY UNDISCOUNTED ANNUAL BURDEN ON CLASS III RAILROADS

Requirement area	Number of impacted small railroads	Year 1 cost per small railroad—undiscounted	Average annual cost in subsequent years per small railroad—undiscounted
Oil Spill Response Plans	55	$51,020	$25,082
Information Sharing	160	7,758	2,365
Total burden per small railroad ($)		58,778	27,447

In conclusion, PHMSA believes that although some small railroads will be directly impacted, the average impact will amount to less than one percent of an average small railroad's annual operating revenue.

This final rule is not expected to have a noticeable impact on the competitive position of the affected small railroads or on the small entity segment of the railroad industry as a whole. The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as ''feeders'' to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the

[49] Costs per railroad are derived in the draft RIA, with costs for all Class III railroads divided by the 55 impacted railroads. The Year 1 total costs are calculated at $2,806,125. The estimated Year 1 cost per railroad is then calculated at $51,020 = $2,806,125/55 small railroads. The average annual cost for the subsequent years is calculated at $1,379,520 = $12,415,681/9 years. The estimated average annual cost per small railroad for the subsequent years is then calculated at $25,082 = $11,379,520/55 small railroads.

[50] Short Line and Regional Railroad Association.2017. ''Short Line and Regional Railroad Facts and Figures.''

[51] Please refer to the draft RIA for full description on how these costs per railroad are derived.

[52] Short Line and Regional Railroad Association. 2017. ''Short Line and Regional Railroad Facts and Figures.''

larger systems, which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although their relative interests do not always coincide, the relationship between the large and small entity segments of the railroad industry is more supportive and co-dependent than competitive.

It is also rare for small railroads to compete with each other. As mentioned above, small railroads generally serve smaller, lower density markets and customers. They tend to operate in markets where there is not enough traffic to attract or sustain rail competition, large or small. Given the significant capital investment required (to acquire right-of-way, build track, purchase fleet, etc.), new entry in the railroad industry is not a common occurrence. Thus, even to the extent the final rule may have an economic impact, PHMSA does not expect it to have an impact on the intramodal competitive position of small railroads.

(6) A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

PHMSA is promulgating this final rule in response to recent train accidents involving the derailment of HHFTs. Shipments of large volumes of liquid petroleum oil pose a significant risk to life, property, and the environment. The Agency considered several alternatives that would lessen the impacts on small businesses, including: Applying the OSRP requirement to railroads operating on Class III track or higher, and applying the OSRP requirement to consists of 70 or more carloads of crude oil. While these alternatives would reduce the impact on small businesses relative to the alternative selected by PHMSA, the Agency determined that to ensure protection of the environment, life and property, OSRP requirements should be applied to all railroads operating trains hauling 20 or more carloads of crude oil in a block or 35 carloads throughout a train consist on all classes of track. Several commenters submitted comments stating that application of OSRPs should be based on the risk of a significant oil spill and not on entity size. OSRPs will ensure a coordinated and prompt response to oil spills from trains at significant risk of spilling large quantities of oil. The other alternatives were rejected because they do not adequately address the risk of a worst-case discharge throughout the rail system.

(7) For a Covered Agency, as Defined in Section 609(d)(2), a Description of the Steps the Agency Has Taken To Minimize Any Additional Costs of Credit for Small Entities

PHMSA is not a covered entity.

G. Paperwork Reduction Act

PHMSA is requesting a revision to the information collection from the Office of Management and Budget (OMB) under OMB Control No. 2137–0628, entitled ''Flammable Hazardous Materials by Rail Transportation.'' This final rule will result in an increase in annual burden and costs under OMB Control No. 2137–0628 due to proposed requirements pertaining to the creation of oil spill response plans and notification requirements for the movement of flammable liquids by rail.

Under the Paperwork Reduction Act of 1995, Public Law 104–13, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of title 5 of the CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This document identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA received comments from industry stakeholders, API and AAR which suggested the burden hours estimated for plan development were too low. These commenters did not provide data or estimates to revise the data. To be responsive to commenters' concerns, PHMSA provided additional analysis and updated the estimates for the level of effort required to complete a response plan. This amounts to doubling the effort for core plan development and increasing by 12-fold the effort estimated to create a single response zone appendix. Additional information concerning OSRP plan development hours is available in the final RIA in the docket for this rulemaking.

Oil Spill Response Plans

PHMSA estimates that there will be approximately 73 respondents, based on a review of the number of railroad operators in existence that transport trains with 20 or more tank cars loaded with liquid petroleum oil in a continuous block or 35 or more tank cars loaded with liquid petroleum oil throughout the train. PHMSA estimates that it will take a rail operator 180 hours to produce a comprehensive oil spill response plan. In addition, the oil spill response plan will have an addendum for each response zone through which the applicable trains pass. It is estimated this addendum will take 180 hours per response zone. The comprehensive oil response plans also will require annual maintenance. This annual maintenance is expected to take 162 hours for Class I railroads, 54 hours for Class II railroads, and 36 hours for Class III railroads.

Initial Development of Oil Spill Response Plan

There are seven Class I railroads in existence that will be required to create a comprehensive oil spill response plan at 180 hours per plan resulting in 1,260 burden hours. Each Class I railroad is expected to have 8 response zones at 180 hours per response zone resulting in 10,080 burden hours. Combined this will result in a total of 11,340 burden hours Class I railroad oil spill response plans.

There are eleven Class II railroads in existence that will be required to create a comprehensive oil spill response plan at 180 hours per response plan resulting in 1,980 burden hours. Each Class II railroad is expected to have 2 response zones at 180 hours per zone resulting in 3,960 burden hours. Combined this will result in a total of 5,940 burden Class II railroad oil spill response plans.

There are 55 Class III railroads in existence that will be required to create a comprehensive oil spill response plan at 180 hours per response plan resulting in 9,900 burden hours. Each class III railroad is expected to pass through 1 response zones at 180 hours per zone resulting in 9,900 burden hours. Combined this will result in a total of 19,800 burden hours for Class III railroads oil spill response plans.

The total annual burden hours for all initial creation of oil spill response plans is 37,080 burden hours. There are no out of pocket expenses associated with this information collection. *Presented below is a summary of the numbers describe above:*

Class I—(7 Responses × 180 Hours per plan) + (7 responses × 8 Response Zones

× 180 hours per zone) = 11,340 burden hours.

Class II—(11 Response × 180 Hours per plan) + (11 response × 2 Response Zones × 180 hours per zone) = 5,940 burden hours.

Class III—(55 Response × 180 Hours per plan) + (55 responses × 1 Response Zone × 180 hours per zone) = 19,800 burden hours.

Oil Spill Response Plan Maintenance—Performed Annually

There are seven Class I railroads in existence that will be required to annually maintain their oil spill response plan at 162 hours per plan resulting in 1,134 annual burden hours.

There are eleven Class II railroads in existence that will be required to annually maintain their oil spill response plan at 54 hours per plan resulting in 594 annual burden hours.

There are 55 Class III railroads in existence that will be required to annually maintain their oil spill response plan at 36 hours per plan resulting in annual burden hours.

The total annual burden hours for annual updates of oil spill response plans is 3,708 burden hours. *Presented below is a summary of the numbers describe above:*

Class I—7 Responses × 162 Hours per response = 1,134 annual burden hours

Class II—11 Response × 54 Hours per response = 594 annual burden hours

Class III—55 response × 36 hours per response = 1,980 annual burden hours

Total Hours for Plan Maintenance = 3,708 Annual Burden Hours.

Notifications to Emergency Response Commissions

Initial Notification Response Plan

For the creation of the initial HHFT information sharing notification PHMSA estimates that there will be approximately 178 respondents based on a review of the number of railroad operators shipping class 3 flammable liquids. PHMSA estimates that it will take a rail operator 30 hours to create initial notification plan for the State Emergency Response Commissions (SERCs), 30 hours to create initial notification plan for the Tribal Emergency Response Commissions (TERCs), and 15 hours to create the initial plan for other state delegated agencies.

There are seven Class I railroads required to create SERC plans at 30 hours per response for a total of 210 burden hours. There are seven Class I railroads at 30 hours per response for 210 burden hours for TEPC plans. There are seven Class I railroads at 15 hours per response for a total of 105 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 525 hours for Class I railroads.

There are eleven Class II railroads at 30 hours per response resulting in 330 burden hours for SERC plans. There are eleven Class II railroads at 30 hours per response resulting in 330 burden hours for TERC plans. There are eleven Class II railroads at 15 hours per response resulting in 165 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 825 hours for Class II railroads.

There are 160 Class III railroads at 30 hours per response resulting in 4,800 burden hours for SERC plans. There are 160 Class III railroads at 30 hours per response resulting in 4,800 burden hours for TERC plans. There are 160 Class III railroads at 15 hours per response resulting in 2,400 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 12,000 hours for Class III railroads.

The total annual burden hours for initial notification plans is 13,350 burden hours.

Presented below is a summary of the numbers describe above:

Class I—(7 responses × 30 hours for SERC plan) + (7 responses × 30 hours for TERC plan) + (7 responses × 15 hours for other state delegated agency plan) = 525 burden hours.

Class II—(11 responses × 30 hours for SERC plan) + (11 responses × 30 hours for TERC plan) + (11 responses × 15 hours for other state delegated agency plan) = 825 burden hours.

Class III—(160 responses × 30 hours for SERC plan) + (160 responses × 30 hours for TERC plan) + (160 responses × 15 hours for other state delegated agency plan) = 12,000 burden hours.

Notification Response Plan Maintenance—Performed Annually

For the maintenance of the notification plan PHMSA estimates that there will be approximately 178 respondents based on a review of the number of railroad operators shipping class 3 flammable liquids. PHMSA estimates that it will take a rail operator 12 hours to maintain notification plan for the SERCs, 12 hours to maintain notification plan for TERCs, and 6 hours to maintain the plan for other state delegated agencies.

There are seven Class I railroads at 12 hours per response resulting in 84 burden hours for SERC plans. There are seven Class I railroads at 12 hours per response resulting in 84 burden hours for TERC plans. There are seven Class I railroads at 6 hours per response resulting in 42 burden hours for other state delegated agency plans. This will result in an annual total burden of 210 hours for Class I railroads.

There are eleven Class II railroads at 12 hours per response resulting in 132 burden hours for SERC plans. There are eleven Class II railroads at 12 hours per response resulting in 132 burden hours for TERC plans. There are eleven Class II railroads at 6 hours per response resulting in 66 burden hours for other state delegated agency plans. This will result in an annual burden of 330 hours for Class II railroads.

There are 160 Class III railroads at 12 hours per response resulting in 1,920 burden hours for SERC plans. There are 160 Class III railroads at 12 hours per response resulting in 1,920 burden hours for TERC plans. There are 160 Class III railroads at 6 hours per response resulting in 960 burden hours for other state delegated agency plans. This will result in an annual burden of 4,800 hours for Class III railroads.

The total annual burden hours for annual maintenance of notification plans is 5,340 burden hours. There are no out of pocket expenses associated with this information collection. *Presented below is a summary of the numbers describe above:*

Class I—(7 responses × 12 hours for SERC plan) + (7 responses × 12 hours for TERC plan) + (7 responses × 6 hours for other state delegated agency plan) = 210 burden hours.

Class II—(11 responses × 12 hours for SERC plan) + (11 responses × 12 hours for TERC plan) + (11 responses × 6 hours for other state delegated agency plan) = 330 burden hours.

Class III—(160 responses × 12 hours for SERC plan) + (160 responses × 12 hours for TERC plan) + (160 responses × 6 hours for other state delegated agency plan) = 4,800 burden hours.

Total Increased Burden

OMB No. 2137–0682: Flammable Hazardous Materials by Rail Transportation.

Initial Year Annual Burden:

Initial Year Annual Responses: 740.

Initial Year Annual Burden Hours: 50,430.

Additional Cost Burden: $0.

Subsequent Year Burden:

Annual Responses: 607.

Annual Burden Hours: 9,048.

Additional Cost Burden: $0.

Please direct your requests for a copy of the information collection to Steven Andrews or Shelby Geller, U.S. Department of Transportation, Pipeline & Hazardous Materials Safety

Administration (PHMSA), East Building, Office of Hazardous Materials Standards (PHH–12), 1200 New Jersey Avenue Southeast, Washington, DC 20590, Telephone (202) 366–8553.

H. Executive Order 13211

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' (66 FR 28355; May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

PHMSA has evaluated this action in accordance with Executive Order 13211. See the environmental assessment section for a more thorough discussion of environmental effects and the supply, distribution, or use of energy. PHMSA has determined that this action will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

I. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Public Law 104–4. It does not result in costs of $100 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule. As such, PHMSA has concluded that the final rule does not require an Unfunded Mandates Act analysis.

J. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, ''Promoting International Regulatory Cooperation,'' 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. We have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

K. Environmental Assessment

PHMSA has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321, *et seq.*), as amended; the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508); the U.S. Department of Transportation (DOT) Order 5610.C (September 18, 1979, as amended on July 13, 1982 and July 30, 1985), entitled ''Procedures for Considering Environmental Impacts,'' and other pertinent environmental regulations, Executive Orders, statutes, and laws for the consideration of environmental impacts of PHMSA actions. The agency relies on all authorities noted above to ensure that it actively incorporates environmental considerations into informed decision-making on all of its actions, including rulemaking. An ''Environmental Assessment'' (EA) and a ''Finding of No Significant Impact'' (FONSI) are available in the docket PHMSA–2014–0105 (HM–251B). PHMSA has concluded that this action would have a positive effect on the human and natural environments since these response plan and information requirements would mitigate environmental consequences of spills related to rail transport of petroleum oil and HHFTs by reducing the severity of incidents as follows:

Oil Spill Response Planning	• Improved Response Times. • Improved Communication/Defined Command Structure. • Better Access to Equipment. • Trained Responders.
Information Sharing	• Improved Communication. • Enhanced Preparedness.

L. Regulatory Identification Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulator Actions (''Unified Agenda''). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. RIN 2137–AF08 can be used to cross-reference this action with the Unified Agenda.

M. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials

transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 130

Incorporation by reference, Oil pollution, Packaging and containers, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 2. Revise § 107.301 to read as follows:

§ 107.301 Delegated authority for enforcement.

Under redelegation from the Administrator of the Pipeline and Hazardous Materials Safety Administration, the Associate Administrator for Hazardous Materials Safety and the Office of the Chief Counsel exercise their authority for enforcement of the Federal hazardous material transportation law, Federal Water Pollution Control Act, this subchapter, and subchapters B and C of this chapter, in accordance with § 1.97 of this title.

■ 3. Revise § 107.305(a) to read as follows:

§ 107.305 Investigations.

(a) *General.* In accordance with its delegated authority under part 1 of this title, the Associate Administrator may initiate investigations relating to compliance by any person with any provisions of this subchapter, subchapter B of this chapter, or subchapter C of this chapter, or any special permit, approval, response plan, or order issued thereunder, or any court decree relating thereto. The Associate Administrator encourages voluntary production of documents in accordance with and subject to § 105.45 of this subchapter, and hearings may be conducted, and depositions taken pursuant to 49 U.S.C. 5121(a). The Associate Administrator may conduct investigative conferences and hearings in the course of any investigation.

* * * * *

■ 4. Revise § 107.309(a) to read as follows:

§ 107.309 Warning letters.

(a) The Associate Administrator may issue a warning letter to any person whom the Associate Administrator believes to have committed a probable violation of the Federal hazardous material transportation law, the Federal Water Pollution Control Act, or any provision of this subchapter, subchapter B of this chapter, subchapter C of this chapter, or any special permit issued thereunder.

* * * * *

■ 5. Amend § 107.311 by revising paragraphs (a) and (b)(1) to read as follows:

§ 107.311 Notice of probable violation.

(a) The Office of Chief Counsel may serve a notice of probable violation on a person alleging the violation of one or more provisions of the Federal hazardous material transportation law, the Federal Water Pollution Control Act, or any provision of this subchapter, subchapter B of this chapter, or subchapter C of this chapter, or any special permit, response plan, or order issued thereunder.

(b) * * *

(1) A citation of the provisions of the Federal hazardous material transportation law, Federal Water Pollution Control Act, an order issued thereunder, this subchapter, subchapter B of this chapter, subchapter C of this chapter, or the terms of any special permit issued thereunder which the Office of Chief Counsel believes the respondent is violating or has violated.

* * * * *

■ 6. Amend § 107.329 by adding paragraph (c) to read as follows:

§ 107.329 Maximum penalties.

* * * * *

(c) Any owner, operator, or person found to have violated a response plan or provision of 33 U.S.C. 1321(j), or any regulation or order issued thereunder, is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

■ 7. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 CFR 1.81 and 1.97.

§ § 130.1, 130.2, 130.3, 130.5, 130.11, and 130.21 [Designated as Subpart A]

■ 8. Designate §§ 130.1, 130.2, 130.3, 130.5, 130.11, and 130.21 as subpart A and add a heading for newly designated subpart A to read as follows:

Subpart A—Applicability and General Requirements

■ 9. Amend § 130.2 by revising paragraphs (a) and (d) to read as follows:

§ 130.2 Scope.

(a) The requirements of this part apply to oil that is subject to a basic or comprehensive oil spill response plan in accordance with subparts B and C of this part.

* * * * *

(d) The requirements in subpart C of this part do not apply to mobile marine transportation-related facilities (see 33 CFR part 154).

■ 10. Amend § 130.5:

■ a. By adding, in alphabetical order, definitions for ''Adverse weather'' and ''Environmentally sensitive or significant areas'';

■ b. By revising the definition for ''Liquid'' and removing the note following the definition;

■ c. By adding, in alphabetical order, definitions for ''Maximum potential discharge,'' ''Oil Spill Removal Organization,'' and ''On-Scene Coordinator'';

■ d. By revising the definitions of ''Person'' and ''Petroleum oil'';

■ e. By adding, in alphabetical order, defintions for ''Response activities,'' ''Response plan,'' and ''Response zone''; and

■ f. By revising the definition of ''Worst-case discharge''.

The additions and revisions read as follows:

§ 130.5 Definitions.

* * * * *

Adverse weather means the weather conditions (*e.g.,* ice conditions, temperature ranges, flooding, strong winds) that will be considered when identifying response systems and equipment to be deployed in accordance with a response plan.

* * * * *

Environmentally sensitive or significant areas (ESA) means a ''sensitive area'' identified in the applicable Area Contingency Plan (ACP), or if no applicable, complete ACP exists, an area of environmental importance which is in or adjacent to navigable waters.

* * * * *

Liquid means a material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psia). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D4359–90 ''Standard Test Method for Determining Whether a Material is Liquid or Solid'' (IBR, see § 171.7 of this chapter).

* * * * *

Maximum potential discharge means a planning volume for a discharge from a motor vehicle or rail car equal to the capacity of the cargo container.

* * * * *

Oil Spill Removal Organization (OSRO) means an entity that provides response resources.

On-Scene Coordinator (OSC) means the Federal official pre-designated by the Administrator of the United States Environmental Protection Agency (EPA) or by the Commandant of the United States Coast Guard (USCG) to coordinate and direct Federal response under the National Contingency Plan (NCP) (40 CFR part 300, subpart D).

* * * * *

Person means an individual, firm, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body, as well as a department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government. This definition includes railroads.

Petroleum oil means any oil extracted or derived from geological hydrocarbon deposits, including oils produced by distillation or their refined products.

* * * * *

Response activities means the containment and removal of oil from navigable waters and adjoining shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the environment.

Response plan means a basic oil spill response plan meeting requirements of subpart B of this part or a comprehensive oil spill response plan meeting requirements of subpart C of this part. For comprehensive plans in subpart C, this definition includes both the railroad's core plan and the response zone appendices, for responding, to the maximum extent practicable, to a worst-case discharge of oil or the substantial threat of such a discharge.

Response zone means a geographic area along applicable rail route(s), containing one or more adjacent route segments for which the railroad is required to plan for the deployment of, and provide, spill response capabilities meeting the planning requirements of § 130.130. The size, locations, and boundaries of the zone are determined and identified by the railroad after considering the existing location and organizational structure of each railroad's incident management team (IMT), including the availability and capability of response resources.

* * * * *

Worst-case discharge means ''the largest foreseeable discharge in adverse weather conditions,'' as defined at 33 U.S.C. 1321(a)(24). The largest foreseeable discharge includes discharges resulting from fire or explosion. The worst-case discharge from a unit train consist is the greater of:

(1) 300,000 gallons of liquid petroleum oil; or

(2) 15 percent of the total lading of liquid petroleum oil transported within the largest unit train consist reasonably expected to transport liquid petroleum oil in a given response zone. The worst-case discharge calculated from tank cars exceeding 42,000 gallons is equal to the capacity of the cargo container.

§ § 130.22 through 130.29 [Added and Reserved]

■ 11. Add reserved §§ 130.22 through 130.29 to subpart A.

§ § 130.31 and 130.33 [Designate as Subpart B]

■ 12. Designate §§ 130.31 and 130.33 as subpart B and add a heading for newly designated subpart B to read as follows:

Subpart B—Basic Spill Response Plans

■ 13. Amend § 130.31 by revising the section heading and paragraphs (a) introductory text and (b) to read as follows:

§ 130.31 Basic spill response plans.

(a) No person may transport liquid petroleum oil in a packaging having a capacity of 3,500 gallons or more unless that person has a current basic written plan that:

* * * * *

(b) A railroad with a comprehensive plan in conformance with the requirements of subpart C of this part is not required to have a basic spill response plan for routes covered by the comprehensive plan.

* * * * *

■ 14. Revise the heading of § 130.33 to read as follows:

§ 130.33 Basic response plan implementation.

* * * * *

§ § 130.34 through 130.99 [Added and Reserved]

■ 15. Add reserved §§ 130.34 through 130.99 to subpart B.

■ 16. Add subpart C to read as follows:

Subpart C—Comprehensive Oil Spill Response Plans

Sec.

130.100 Applicability of comprehensive oil spill response plans.
130.105 Purpose and general format.
130.110 Consistency with the National Contingency Plan.
130.115 Consistency with Area Contingency Plans.
130.120 Information summary.
130.125 Notification procedures and contacts.
130.130 Response and mitigation activities.
130.135 Training.
130.140 Equipment testing and exercise procedures.
130.145 Plan review, update, and recordkeeping procedures.
130.150 Approval and submission procedures.

§ 130.100 Applicability of comprehensive oil spill response plans.

(a) Railroads must have current, written comprehensive oil spill response plans (COSRPs) meeting the requirements of this subpart for any route or route segments used to transport either of the following:

(1) Any liquid petroleum oil or other non-petroleum oil subject to this part in a quantity greater than 42,000 gallons (1,000 barrels) per packaging; or

(2) A single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist.

(i) Tank cars carrying liquid petroleum oil products not meeting the criteria for Class 3 flammable or combustible material in § 173.120 of this chapter, or containing residue as defined in § 171.8 of this chapter, are not required to be included when determining the number of tank cars transporting liquid petroleum oil in paragraph (a)(2) of this section.

(ii) [Reserved]

(b) The requirements of this subpart do not apply if the oil being transported is otherwise excepted per § 130.2(c).

(c) A railroad required to develop a response plan in accordance with this section may not transport applicable quantities of oil (including handling and storage incidental to transport) unless—

(1) The response plan is submitted, reviewed, and approved as required by § 130.150 except as described in paragraph (d) of this section; and

(2) The railroad is operating in compliance with the response plan.

(d) A railroad required to develop a response plan in accordance with this section may continue to transport oil without an approval from PHMSA provided that all of the following criteria are met:

(1) The railroad submitted a plan in accordance with the requirements of § 130.150(a) within the previous two years;

(2) The submitted plan includes the certification in § 130.130;

(3) The railroad is operating in compliance with the submitted plan; and

(4) PHMSA has not issued a final decision that all or part of the plan does not meet the requirements of this subpart.

§ 130.105 Purpose and general format.

(a) Each railroad subject to this subpart must prepare and submit a plan, including resources and procedures, for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil. The plan must use and be consistent with the core principle of the National Incident Management System (NIMS) including the utilization of the Incident Command System (ICS).

(b) Each response plan must be formatted to include:

(1) *Core plan.* Response plans with more than one response zone must include a core plan containing an information summary required by § 130.120 and information that does not change between different response zones; and

(2) *Response zone appendix or appendices.* For each response zone included in the response plan, the response plan must include a response zone appendix that provides the information summary required by § 130.120 and any additional information that differs between response zones or is not included in the core plan. In addition, each response zone appendix must identify all of the following:

(i) A description of the response zone, including county(s) and state(s);

(ii) A list of route sections contained in the response zone, identified by railroad milepost or other identifier;

(iii) Identification of environmentally sensitive or significant areas per route section as determined by § 130.115; and

(iv) The location from which the Oil Spill Removal Organization will deploy, and the location and description of the response equipment required by § 130.130(c)(6).

(c) To meet the requirements of the response plan as required by § 130.100, a railroad may submit an applicable Annex(es) of an Integrated Contingency Plan (ICP). The Annex(es) must meet the minimum requirements of a Federal response plan required under this part. Guidance on the ICP is available from the National Response Team (*http://www.NRT.org*).

(d) To meet the requirements of the response plan as required by § 130.100, a railroad may submit a response plan that complies with a State law or regulation. The state plan must meet the minimum requirements of a Federal response plan required under this part and must include all of the following:

(1) An information summary as required by § 130.120;

(2) A list of the names or titles and 24-hour telephone numbers of the qualified individual(s) and at least one alternate qualified individual(s); and

(3) A certification and documentation that that railroad has identified and secured, through contract or other approved means, the private personnel and equipment necessary to respond to a worst-case discharge or a substantial threat of such a discharge.

§ 130.110 Consistency with the National Contingency Plan.

(a) A railroad must certify in the response plan that it reviewed the NCP (40 CFR part 300) and that its response plan is consistent with the NCP.

(b) At a minimum, for consistency with the NCP, a comprehensive response plan must include all of the following:

(1) Demonstrate a railroad's clear understanding of the Incident Command System and Unified Command and the roles and responsibilities of the Federal On-Scene Coordinator;

(2) Include procedures to immediately notify the National Response Center; and

(3) Establish provisions to ensure safety at the response site.

§ 130.115 Consistency with Area Contingency Plans.

(a) A railroad must certify for each response zone that it reviewed each applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP).

(b) At a minimum, for consistency with the applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP), the comprehensive response plan must do all of the following:

(1) Address the removal of a worst-case discharge, and the mitigation or prevention of the substantial threat of a worst-case discharge, of oil;

(2) Identify environmentally sensitive or significant areas along the route, as defined in § 130.5, which could be adversely affected by a worst-case discharge, by reviewing and summarizing the applicable ACP or RCP;

(3) Incorporate appropriate strategies identified in applicable ACPs or RCPs, to protect environmentally sensitive or significant areas identified in paragraph (b)(2) of this section;

(4) Describe the responsibilities of the railroad and of Federal, State, and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and

(5) Identify the procedures to obtain any required Federal and State authorization for using alternative response strategies such as in-situ burning and/or chemical agents, as provided for in the applicable ACP and subpart J of 40 CFR part 300.

§ 130.120 Information summary.

(a) Each person preparing a comprehensive response plan must include information summaries for the core plan and each response zone meeting the requirements of this section.

(b) The information summary for the core plan must include all of the following:

(1) The name and mailing address of the railroad;

(2) A listing and description of each response zone, including county(s) and State(s); and

(3) The name or title of the qualified individual(s) and alternate(s) for each response zone, with telephone numbers at which they can be contacted on a 24-hour basis.

(c) The information summary for each response zone appendix must include all of the following:

(1) The name and mailing address of the railroad;

(2) A description of the response zone, including county(s) and State(s);

(3) The name or title of the qualified individual(s) and alternate(s) for the response zone, with telephone numbers at which they can be contacted on a 24-hour basis;

(4) The type(s) of oil expected to be carried; and

(5) Determination of the worst-case discharge and supporting calculations.

(d) The information summary should be listed first, before other information in the plan, or clearly identified through the use of tabs or other visual aids.

§ 130.125 Notification procedures and contacts.

(a) The railroad must develop and implement notification procedures that include all of the following:

(1) Procedures for immediate notification of the qualified individual or alternate and immediate communications between that individual, and the appropriate Federal official and the persons providing personnel and equipment;

(2) A checklist of the notifications required under the response plan, listed in the order of priority;

(3) The primary and secondary communication methods by which notifications can be made;

(4) The circumstances and necessary time frames under which the notifications must be made; and

(5) The information to be provided in the initial and each follow-up notification.

(b) The notification procedures must include the names of the following individuals or organizations, with the ten-digit telephone numbers at which they can be contacted on a 24-hour basis:

(1) The National Response Center (NRC);

(2) Qualified individual, or alternative;

(3) Federal, State, and local agencies that the railroad expects to have pollution control responsibilities or provide pollution control support; and

(4) Personnel or organizations to notify for the activation of equipment and personnel resources identified in § 130.130.

§ 130.130 Response and mitigation activities.

(a) Each railroad must certify that it has identified and secured, by contract or other means, the private response resources in each response zone necessary to remove and control, to the maximum extent practicable, a worst-case discharge. The certification must be signed by the qualified individual or an appropriate corporate officer.

(b) Each railroad must identify and describe in the plan the response resources that are available to arrive onsite within 12 hours of the discovery of a worst-case discharge or the substantial threat of such a discharge. It is assumed that resources can travel according to a land speed of 35 miles per hour, unless the railroad can demonstrate otherwise.

(c) Each plan must identify all of the following information for response and mitigation activities:

(1) Methods of initial discharge detection;

(2) Responsibilities of, and actions to be taken by, personnel to initiate and supervise response activities pending the arrival of the qualified individual or other response resources identified in the response plan that are necessary to ensure the protection of safety at the response site and to mitigate or prevent any discharge from the tank cars;

(3) The qualified individual's responsibilities and authority;

(4) Procedures for coordinating the actions of the railroad or qualified individual with the actions of the U.S. EPA or U.S. Coast Guard On-Scene Coordinator responsible for monitoring or directing response and mitigation activities;

(5) The Oil Spill Removal Organization's responsibilities and authority; and

(6) For each Oil Spill Removal Organization identified under this section, a listing adequate for the worst-case discharge listed in the plan of:

(i) Equipment, supplies, and personnel available, and the location thereof, including equipment suitable for adverse weather conditions and the personnel necessary to continue operation of the equipment and staff the Oil Spill Removal Organization during the response, in accordance with appendix C of 33 CFR part 154; or

(ii) In lieu of the listing of equipment, supplies, and personnel, a statement that the Oil Spill Removal Organization has been classified by the United States Coast Guard under 33 CFR 154.1035 or 155.1035.

§ 130.135 Training.

(a) A railroad must certify in the response plan that it has conducted training to ensure that:

(1) All railroad employees subject to the plan know—

(i) Their responsibilities under the comprehensive oil spill response plan; and

(ii) The name of, and procedures for contacting, the qualified individual or alternate on a 24-hour basis;

(2) All railroad employees with responsibilities as reporting personnel in the plan also know—

(i) The content of the information summary of the response plan;

(ii) The toll-free telephone number of the National Response Center; and

(iii) The notification process required by § 130.105; and

(3) The qualified individual or, as an alternative, the person acting in an Incident Commander role, may be trained in the Incident Command System at the Incident Commander Level.

(b) Employees subject to this section must be trained at least once every five years or, if the plan is revised during the five-year recurrent training cycle, within 90 days of implementation of the revised plan. New employees must be trained within 90 days of employment or change in job function.

(c) Each railroad must create and retain records of current training of each railroad employee engaged in oil spill response, inclusive of the preceding five years, in accordance with this section, for as long as that employee is employed and for 90 days thereafter. A railroad must make the employee's record of training available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation. The record must include all of the following:

(1) The employee's name;

(2) The completion date of the employee's most recent training;

(3) The name and address of the person providing the training; and

(4) A certification statement that the designated employee has been trained, as required by this subpart.

(d) Nothing in this section relieves a person from the responsibility to ensure that all personnel are trained in accordance with other regulations. As an example, response personnel may be subject to the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120, including volunteers or casual laborers employed during a response who are subject to those standards pursuant to 40 CFR part 311. Hazmat employees, as defined in § 171.8 of this chapter, are subject to the training requirements in subpart H of part 172 of this chapter, including safety training.

§ 130.140 Equipment testing and exercise procedures.

(a) *Testing.* The plan must include a description of the methods used to ensure that equipment testing meets the manufacturer's minimum recommendations or equivalent.

(b) *Exercises.* A railroad must implement and describe an exercise program for COSRPs following the National Preparedness for Response Exercise Program (PREP) Guidelines, which can be found using the search function on the USCG's web page

(*https://homeport.uscg.mil*). These guidelines are also available from the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20875 (fax: 301–386–5394, stock number USCG–X0241). As an alternative, a railroad choosing not to follow PREP Guidelines must have an exercise program that is equivalent to PREP. The plan must include a description of the exercise procedures and programs the railroad uses to assess whether its response plan will function as planned, including the types of exercises and their frequencies.

(c) *Recordkeeping.* Railroads must keep records showing the exercise dates and times, and the after action reports that accompany the response plan exercises. Railroads must provide copies of these records to Department of Transportation representatives upon request.

§ 130.145 Plan review, update, and recordkeeping procedures.

(a) For purposes of this part, copy means a hardcopy or an electronic version. Each railroad must:

(1) Maintain a copy of the complete plan at the railroad's principal place of business;

(2) Provide a copy of the core plan and the appropriate response zone appendix to each qualified individual and alternate; and

(3) Provide a copy of the information summary to each dispatcher in response zones identified in the plan.

(b) Each railroad must include procedures to review the plan after a discharge requiring the activation of the plan in order to evaluate and record the plan's effectiveness.

(c) Each railroad must update its plan to address new or different conditions or information. In addition, each railroad must review its plan in full at least every 5 years from the date of the last approval.

(d) If changes to the plans are made, updated copies of the plan must be provided to every individual referenced under paragraph (a) of this section.

(e) If new or different operating conditions or information would substantially affect the implementation of the response plan, the railroad must immediately modify its plan to address such a change and must submit the change to PHMSA within 90 days in accordance with § 130.111. Examples of changes in operating conditions or information that would substantially affect a railroad's response plan are:

(1) Establishment of a new railroad route, including an extension of an existing railroad route, construction of a new track, or obtaining trackage rights over a route not covered by the previously approved plan used for trains which require a comprehensive plan in accordance with § 130.100(a);

(2) The name of the Oil Spill Removal Organization;

(3) Emergency response procedures;

(4) The qualified individual;

(5) A change in the NCP or an ACP that has significant impact on the equipment appropriate for response activities (*e.g.,* identification of ESAs as described by § 130.115);

(6) A change in the type of oil transported, if the type affects the required response resources (*e.g.,* a change from crude oil to gasoline); and

(7) Any other information relating to circumstances that may affect full implementation of the plan.

(f) If PHMSA determines that a change to a response plan does not meet the requirements of this part, PHMSA will notify the operator of any alleged deficiencies, and provide the railroad with an opportunity to respond—including an opportunity for an informal conference—to any proposed plan revisions, as well as an opportunity to correct any deficiencies.

(g) A railroad that disagrees with a determination that proposed revisions to a plan are deficient may petition PHMSA for reconsideration within 30 days from the date of receipt of PHMSA's notice. After considering all relevant material presented in writing or at an informal conference, PHMSA will notify the railroad of its final decision. The railroad must comply with the final decision within 30 days of issuance, unless PHMSA allows additional time.

§ 130.150 Approval and submission procedures.

(a) Each railroad must submit an electronic copy in an industry standard format (*e.g.,* Adobe Acrobat, Microsoft Word, or hypertext markup language (HTML)) of the COSRP required by this part. Copies of the response plan must be submitted via commercial carrier to: Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 2nd Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Alternatively, the railroad may arrange for secure electronic transfer of the file to PHMSA or email a copy of the plan to *PHMSA.OPA90@dot.gov.*

(b) If PHMSA determines that a response plan requiring approval does not meet all the requirements of this part, PHMSA will notify the railroad of any alleged deficiencies and provide the railroad an opportunity to respond—including the opportunity for an informal conference—to any proposed plan revisions, as well as an opportunity to correct any deficiencies.

(c) A railroad that disagrees with PHMSA's determination that a plan contains alleged deficiencies may petition PHMSA for reconsideration within 30 days from the date of receipt of PHMSA's notice. After considering all relevant material presented in writing or at an informal conference, PHMSA will notify the operator of its final decision. The railroad must comply with the final decision within 30 days of issuance, unless PHMSA allows additional time.

(d) PHMSA will approve the response plan if PHMSA determines that the response plan meets all requirements of this part. PHMSA may consult with the U.S. Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG), allowing a Federal On-Scene Coordinator (OSC) to identify concerns regarding a plan's compliance with the statutory and regulatory requirements.

(e) If PHMSA receives a request from a Federal OSC to review a response plan, PHMSA will give a copy of the response plan to the Federal OSC provided that any requests for the plan are referred to PHMSA. PHMSA may consider Federal OSC comments on: Response techniques; protecting fish, wildlife and environmentally sensitive environments; and consistency with the ACP. PHMSA remains the approving authority for the response plan.

(f) A railroad may ask for confidential treatment in accordance with the procedures in § 105.30 of this chapter.

§ 130.155 Implementation of comprehensive oil spill response plans.

If, during transportation of oil subject to this subpart, a discharge of oil occurs—into or on the navigable waters; on the adjoining shorelines to the navigable waters; or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States—the person transporting the oil must implement the plan required by § 130.100 in a manner consistent with the National Contingency Plan, 40 CFR part 300, or as otherwise directed by the Federal On-Scene Coordinator.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 17. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Public Law 101–410 section 4; Public Law 104–134, section 31001; Public Law 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 18. Amend § 171.7 by:
■ a. In paragraph (h) introductory text, removing ''American Society for Testing and Materials'' and adding in its place ''ASTM International''; and
■ b. Redesignating paragraphs (h)(45) through (51) as (h)(46) through (52) and adding new paragraph (h)(45).

The addition reads as follows:

§ 171.7 Reference material.

* * * * *

(h) * * *

(45) ASTM D7900–13^{e1}, Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography, Approved December 1, 2013, into § 173.121.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 19. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 20. Amend § 173.121 by:
■ a. Removing the word ''or'' from the end of paragraph (a)(2)(iv);
■ b. Removing the period at the end of paragraph (a)(2)(v) and adding ''; or'' in its place; and
■ c. Adding paragraph (a)(2)(vi).

The addition reads as follows:

§ 173.121 Class 3—Assignment of packing group.

(a) * * *

(2) * * *

(vi) Petroleum products containing known flammable gases—Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography (ASTM D7900) (IBR; see § 171.7 of this subchapter) where the initial boiling point is the temperature at which 0.5 weight percent is eluted when determining the boiling range distribution.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 21. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 33 U.S.C. 1321; 49 CFR 1.81 and 1.97.

■ 22. Amend § 174.310 by:
■ a. Removing the semicolon at the end of paragraph (a)(1) and adding a period in its place;
■ b. Removing the ''h'' at the end of paragraph (a)(2); and
■ c. Adding paragraphs (a)(6) and (7).

The additions read as follows:

§ 174.310 Requirements for the operation of high-hazard flammable trains.

(a) * * *

(6) *Oil spill response plans.* The additional requirements for petroleum oil transported by rail in accordance with part 130 of of this chapter.

(7) *High-hazard flammable train (HHFT) information sharing notification for emergency response planning.* The additional requirements for notification in § 174.312.

* * * * *

■ 23. Add § 174.312 to read as follows:

§ 174.312 HHFT information sharing notification for emergency response planning.

(a) Prior to operating high-hazard flammable trains (HHFTs) as defined in § 171.8 of this subchapter, a railroad must provide the information described in paragraphs (b) and (c) to each State Emergency Response Commission (SERC), Tribal Emergency Response Commission (TERC), or other appropriate State-delegated agency in each State through which it operates HHFTs. The SERC, TERC, or other appropriate State-delegated agency shall further distribute the information to the appropriate local authorities at their request.

(b) At a minimum, the information railroads are required to provide to the relevant State or tribal agencies must include all of the following:

(1) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction;

(2) The routes over which the HHFTs will operate;

(3) A description of the hazardous materials being transported and all applicable emergency response information required by subparts C and G of part 172 of this subchapter;

(4) An HHFT point of contact: At least one point of contact at the railroad (including name or email address, title, phone number and address) who has knowledge of the railroad's transportation of affected trains and who is responsible for serving as the point of contact for the SERC, TERC, or other State or tribal agency responsible for receiving the information; and

(5) If a route identified in paragraph (b)(2) of this section is additionally subject to the comprehensive spill plan requirements in subpart C of part 130 of this chapter, the information must include a description of the response zones (including counties and states) and the contact information for the qualified individual and alternate, as specified under § 130.120(c) of this chapter.

(c) The HHFT notification must be maintained and transmitted in accordance with all of the following requirements:

(1) Railroads must update the notifications for changes in volume greater than 25%.

(2) Notifications and updates may be transmitted electronically or by hard copy.

(3) If the disclosure includes information that a railroad believes is security sensitive or proprietary and exempt from public disclosure, the railroad should indicate that in the notification.

(4) Each point of contact must be clearly identified by name or title, and contact role (*e.g.,* qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles.

(5) Copies of the railroad's notifications made under this section must be made available to the Department of Transportation upon request.

Issued in Washington, DC, on February 12, 2019, under authority delegated in 49 CFR part 1.97.

Drue Pearce,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

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Federal Register

Vol. 84, No. 40

Thursday, February 28, 2019

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Presidential Documents	
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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
4677–4948 19
4949–5334 20
5335–5582 21
5583–5950 22
5951–6052 25
6053–6312 26
6313–6650 27
6651–6952 28

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

Proclamations:
9840 2043
9841 2045
9842 (See Proc. 9822) 3665
9843 3965
9844 4949

Executive Orders:
13788 (Amended by 13858) 2039
13858 2039
13859 3967

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
Space Policy Directive–4 of February 19, 2019 6049

5 CFR

894 1599
1201 5583
1655 1600
2634 6053
2636 6053

Proposed Rules:
532 3729

7 CFR

51 959
273 4677
300 2427
301 2427
318 2427
319 2427
330 2427
340 2427
355 2427
905 2047
932 4307
953 4681
989 2049
1206 5335
1208 4951
1212 1343
1774 3669

Proposed Rules:
54 1641
205 4377
273 980
278 4739
279 4739
985 4381
1206 5379
1209 3114

9 CFR

310 2430

10 CFR

2 2433
9 3095
13 2433
72 ..... 4309, 4683, 4684, 6055
430 ..... 2436, 5346
903 5347

Proposed Rules:
34 3116
36 3116
39 3116
50 2069
52 2069
72 6086
100 2069
430 ..... 3120, 3910, 6088, 6095
431 ..... 1652, 3910

11 CFR

Proposed Rules:
100 2070
110 3344
112 2071

12 CFR

1 4222
3 4222
5 4222
19 6313
22 4953
23 4222
24 4222
32 4222
46 4222
109 6313
172 4953
208 ..... 4222, 4953
211 ..... 4222, 4309
215 4222
217 4222
223 4222
225 4222
238 4309
252 ..... 4222, 6651, 6664
263 2051
303 2705
324 4222
325 4222
327 ..... 1346, 4222
337 1346
339 4953
347 4222
348 2705
390 4222
614 4953
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, 4953
790 1601
791 1601
792 1601
930 5308
932 5308
1026 1356
1277 5308
1411 2437
1610 4975

Proposed Rules:

1 3062
3 ....3062, 6107
5 3062
6 3062
23 3062
24 3062
32 ....3062, 6107
34 3062
44 2778
46 3345
160 3062
192 3062
206 3062
208 3062
211 3062
215 3062
217 ....3062, 6107
223 3062
225 3062
238 ....3062, 4002, 5014
248 2778
251 3062
252 ....4002, 5014
303 3062
324 ....3062, 6107
327 5380
337 ....2366, 3062
347 3062
351 2778
362 3062
365 ....1653, 3062
390 ....1653, 3062
614 5389
715 5957
1041 ....4252, 4298

14 CFR

25 6313
39 ....2437, 2707, 2709, 2713, 2715, 3285, 3288, 3290, 3297, 4310, 4313, 4315, 4318, 4320, 4685, 4686, 4692, 4694, 4987, 5350, 5584, 5587, 5589, 5592, 5595, 6059, 6062, 6064, 6067, 6315, 6317, 6321
48 3669
71 ....961, 2718, 3095, 3097, 3098, 3101, 3673, 3674, 3676, 3677, 3679, 4991, 4993, 5352, 5951, 6671
73 3299
95 963
97 ....2441, 2443, 2719, 2720, 3973, 3975, 3977, 3978, 4994, 4996

Proposed Rules:

13 3614
21 5605
39 ....2465, 2467, 2791, 2793, 2796, 3131, 4012, 4387, 5609, 5611, 5614, 5617, 5620, 5960, 6705, 6708
71 ....3349, 3730, 5014, 5016, 5017, 5019, 5392, 5622, 6708, 6710, 6711
107 ....3732, 3856

15 CFR

6 2445
902 2725
950 3101

16 CFR

1 3980

Proposed Rules:

Ch. II 3134

17 CFR

143 3103
200 5202
201 4906
229 2402
240 ....2402, 4906
242 5202

Proposed Rules:

Ch. I 3350
9 3350
36 3350
37 3350
38 3350
39 3350
43 3350
75 2778
230 ....5393, 6713
232 5393
239 5393
240 ....4614, 5393
255 2778
270 ....1286, 5393
274 ....1286, 5393

18 CFR

11 1359
33 6069
250 966
385 ....966, 3982

Proposed Rules:

7 2469
35 993
141 ....1412, 5968
385 ....1412, 5968

20 CFR

30 3026
404 4323
408 4323
416 4323

Proposed Rules:

404 1006
416 1006

21 CFR

216 4696
312 6672
314 6672
573 6674
872 4998
1308 2448

Proposed Rules:

50 5968
201 6204
310 6204
312 5968
347 6204
352 6204
812 5968
1305 5395

22 CFR

Proposed Rules:

171 1419
203 3351

23 CFR

1270 2731
1275 2731

Proposed Rules:

658 2071

25 CFR

Proposed Rules:

30 3135

26 CFR

1 ....1838, 2952, 6076
301 6468

Proposed Rules:

1 ....1014, 3015
54 5969

27 CFR

Proposed Rules:

9 3353

29 CFR

30 3301
4022 3983

Proposed Rules:

1404 1420
1601 5624
1614 4015
1626 5624
2590 5969
4001 2075
4204 2075
4206 2075
4207 2075
4211 2075
4219 2075

31 CFR

1 6324
27 3105

32 CFR

75 3681
100 968
101 968
110 6676
162 4710
199 4326
279 969
807 5353
809a 2734
813 5353
884 5354

33 CFR

100 3301
117 ....1401, 2735
165 ....969, 2736, 4333, 5354, 6080

Proposed Rules:

100 ....4390, 6107
154 2799
155 2800
165 2479
328 ....2483, 4154
334 3739

34 CFR

36 971
668 971

Proposed Rules:

106 4018

37 CFR

201 3693
202 ....3693, 3698
203 3699
385 1918

Proposed Rules:

2 4393
11 4393
201 1661

38 CFR

3 ....2449, 4336
8 ....2449, 4336
14 ....2449, 4336
19 ....2449, 4336
20 ....2449, 4336
21 ....2449, 4336
38 5952
39 5952

Proposed Rules:

4 ....1678, 3354
17 5629
38 2093
39 2093

39 CFR

20 3107
3035 974

Proposed Rules

3020 1420

40 CFR

19 ....2056, 5955
52 ....976, 1610, 1615, 2060, 2063, 2449, 2738, 3302, 3305, 3701, 3703, 3705, 3708, 3711, 3986, 3991, 4338, 5000, 5004, 5598, 5601, 6334
60 ....3108, 3985, 3986
61 3108
62 3712
63 ....2742, 3108, 3308, 6676
70 ....1615, 3108, 6338
80 2453
122 3324
124 3324
125 3324
180 ....2456, 4340, 4345, 6081, 6339
261 5816

262 5816
264 5816
265 5816
266 5816
268 5816
270 5816
271 5603
273 5816
Proposed Rules:
Ch. I 3396
49 1690
52 ....1015, 1016, 1021, 1025, 1037, 1690, 2109, 2801, 3354, 3358, 3369, 3373, 3376, 3381, 3384, 3387, 3389, 3740, 3742, 3744, 4019, 4021, 4025, 4403, 4407, 4411, 4422, 4426, 5020, 5032, 6353, 6732, 6736
60 ....2484, 2485
62 1039
63 ....1570, 2670, 6739
70 5032
81 ....4029, 4422, 4426
110 ....2483, 4154
112 ....2483, 4154
116 ....2483, 4154
117 ....2483, 4154
122 ....2483, 4154
131 3395
151 4741
174 2115
180 ....1691, 2115, 6740
230 4154
232 ....2483, 4154
271 5650
300 ....2116, 2122, 2483, 4033, 4054
302 ....2483, 4154
401 ....2483, 4154

42 CFR

Proposed Rules:
88 5972
405 6740
424 6740
455 6740
457 6740
493 1536
1001 2340

44 CFR

64 ....978, 3338

45 CFR

1148 6344
1149 1402
1158 1402
1607 1404
1611 1408
Proposed Rules:
144 5969
146 5969
147 5969

46 CFR

506 2459
Proposed Rules:
515 2125

47 CFR

0 ....2753, 6085
1 ....1618, 2460, 2461, 2753, 5008
5 2753
25 2462
30 1618
32 4711
36 4351
54 4711
64 1409
65 4711
73 2753
74 2753
Proposed Rules:
1 ....2485, 4035
2 5654
5 4742
25 ....2126, 4742, 5654
32 2132
54 2132
65 2132
73 ....2485, 6741, 6757
76 4039
97 4742

48 CFR

Ch. 2 4360
204 4362
206 4364
211 4366
212 ....4362, 4368, 4370
215 ....4364, 4368
234 4364
235 4364
236 4371
239 4368
247 4370
252 ....4362, 4368, 4370
501 ....1410, 3714
511 3714
517 3714
519 1410
532 3714
536 3714
543 3714
546 3714
552 ....1410, 3714
5215 3112
5242 3113
5252 3113
Proposed Rules:
215 4429
217 4429
806 1014

49 CFR

107 ....3993, 6910
110 3993
130 6910
171 6910
173 6910
174 6910
Proposed Rules:
10 ....2137, 5403
563 2804
571 6758
1002 1046
1312 1046

50 CFR

17 6278
229 5356
600 4733
622 ....1631, 2759, 3723, 4733, 5955
635 ....3724, 5358, 6701
648 ....1632, 2463, 2760, 3341, 4373, 5377, 6703
665 ....2767, 5378
679 ....2067, 2068, 2723, 2776, 3342, 3726, 3727, 6704
680 2723
697 4733
Proposed Rules:
17 6110
216 5977
217 3136
219 6576
300 ....3403, 4758
622 4758
648 5035

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 26, 2019

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