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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 50

**[Docket ID OCC–2018–0013]**

**RIN 1557–AE36**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 249

**[Docket No. R–1616]**

**RIN 7100–AF10**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 329

**RIN 3064–AE77**

## Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as High-Quality Liquid Assets

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

**ACTION:** Final rule.

**SUMMARY:** The OCC, the Board, and the FDIC (collectively, the agencies) are jointly adopting as a final rule, without change, the August 31, 2018, interim final rule, which amended the agencies' liquidity coverage ratio (LCR) rule to treat liquid and readily-marketable, investment grade municipal obligations as high-quality liquid assets. This treatment was mandated by section 403 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

**DATES:** The final rule is effective on July 5, 2019.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Christopher McBride, Director, James Weinberger, Technical Expert, or Ang Middleton, Bank Examiner (Risk Specialist), (202) 649–6360, Treasury & Market Risk Policy; David Stankiewicz, Special Counsel, Lee Walzer, Counsel, Henry Barkhausen, Counsel, or Daniel Perez, Senior Attorney, (202) 649–5490, Chief Counsel's Office; or for persons who are deaf or hearing-impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

*Board:* Constance Horsley, Deputy Associate Director, (202) 452–5239, Peter Clifford, Manager, (202) 785–6057, J. Kevin Littler, Lead Financial Institution Policy Analyst, (202) 475–6677, or Christopher Powell, Senior Financial Institution Policy Analyst, (202) 452–3442, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Steve Bowne, Counsel, (202) 452–3900, Laura Bain, Senior Attorney, (202) 736–5546, or Jeffery Zhang, Attorney, (202) 736–1968, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

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**SUPPLEMENTARY INFORMATION:**

## I. Background

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) adopted the liquidity coverage ratio (LCR) rule [1] in 2014. The LCR rule established a quantitative liquidity requirement that is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations. The intent of the agencies in issuing the LCR rule was to improve the U.S. banking sector's ability to absorb shocks arising from financial and economic stress and the measurement and management of liquidity risk.[2] The LCR rule generally applies to a bank holding company, savings and loan holding company, or depository institution if: (1) It has total consolidated assets equal to $250 billion or more; (2) it has total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (3) it is a depository institution with total consolidated assets equal to $10 billion or more and is a consolidated subsidiary of a firm that is subject to the LCR rule (each, a covered company).[3] Covered companies generally must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30 calendar-day period. The LCR rule defines three categories of HQLA—level 1, level 2A, and level 2B liquid assets—and sets forth qualifying criteria for HQLA and limitations for an asset's inclusion in a banking organization's HQLA amount.

In 2016, the Board amended its LCR rule to include certain U.S. municipal securities as HQLA, subject to certain

[1] 79 FR 61440 (Oct. 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[2] *Id.*

[3] *See* section 1 of the LCR rule. On December 21, 2018, the agencies invited comment on a proposed rule that would revise the framework for determining the applicability of the standardized liquidity requirements, including the LCR rule, for U.S. banking organizations. *See* Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 FR 66024 (Dec. 21, 2018). On May 24, 2019, the agencies published for comment a proposed rule to apply standardized liquidity requirements to foreign banking organizations with respect to their combined U.S. operations. *See* Proposed Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements for Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 84 FR 24296 (May 24, 2019). These proposed rulemakings, if adopted, would revise the scope of application of the LCR rule.

limitations (2016 Amendments).[4] The 2016 Amendments permitted U.S. municipal securities to qualify as level 2B liquid assets if they were: (1) General obligation securities of public sector entities (that is, a state, local authority, or other governmental subdivision below the U.S. sovereign entity level);[5] (2) investment grade under 12 CFR part 1 as of the calculation date; (3) issued or guaranteed by a public sector entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and (4) not be an obligation of a financial sector entity or a financial sector entity's consolidated subsidiary (unless only guaranteed by a financial sector entity or its consolidated subsidiary and otherwise eligible). The 2016 Amendments limited the inclusion of general obligation securities in the HQLA amount to 5 percent of the covered company's total HQLA amount. The 2016 Amendments also limited the inclusion of general obligation securities of any single public sector entity to two times the average daily trading volume during the previous four quarters of all general obligation securities issued by that public sector entity.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was enacted on May 24, 2018.[6] Section 403 of the EGRRCPA amended section 18 of the Federal Deposit Insurance Act[7] and requires the agencies—for purposes of the LCR rule and any other regulation that incorporates a definition of the term ''high-quality liquid asset'' or another substantially similar term—to treat a municipal obligation as HQLA that is a level 2B liquid asset if that obligation is, as of the calculation date, liquid and readily-marketable and investment grade. Section 403 defines ''municipal obligation'' as an obligation of a State or any political subdivision thereof; or any agency or instrumentality of a State or any political subdivision thereof. Section 403 defines ''liquid and readily-marketable'' as having the meaning given the term in 12 CFR 249.3 or any successor thereto. Section 403 defines ''investment grade'' as having the meaning given the term in 12 CFR 1.2 or any successor thereto.

[4] 81 FR 21223 (Apr. 11, 2016).

[5] The 2016 Amendments defined a general obligation as a bond or similar obligation that is backed by the full faith and credit of a public sector entity. 12 CFR 249.20(c)(2).

[6] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[7] 12 U.S.C. 1828(aa).

## II. Interim Final Rule

On August 31, 2018, the agencies published an interim final rule amending the agencies' LCR rule to implement section 403 of the EGRRCPA and soliciting public comment.[8]

The interim final rule added a definition to the agencies' rule for the term ''municipal obligations,'' which, consistent with the EGRRCPA, means an obligation of (1) a state or any political subdivision thereof or (2) any agency or instrumentality of a state or any political subdivision thereof. In addition, the interim final rule amended the HQLA criteria with respect to level 2B liquid assets by adding municipal obligations that, as of the LCR calculation date, are both liquid and readily-marketable and investment grade (under 12 CFR part 1)[9] to the list of assets that are eligible for treatment as level 2B liquid assets.[10]

Consistent with section 403 of the EGRRCPA, the interim final rule also amended the definition of ''liquid and readily-marketable'' in the FDIC's and OCC's rules so that the term has the same meaning given to it under 12 CFR 249.3 of the Board's rule.[11]

The interim final rule also rescinded the Board's 2016 Amendments so that municipal obligations under the Board's rule are treated consistently with section 403 of the EGRRCPA.

## III. Comments Received

The agencies received nine comment letters addressing the interim final rule, including letters from trade associations, private sector enterprises, and one individual. Commenters generally expressed support for the inclusion of certain municipal obligations as HQLA and the agencies' implementation of section 403 of the EGRRCPA through the interim final rule. Many commenters asserted that municipal obligations were a suitable asset class for HQLA eligibility, with qualities consistent with other level 2B liquid assets, and that the interim final rule effectively satisfied the underlying intent of section 403 of the EGRRCPA. Some commenters suggested additional changes to the LCR rule for the agencies' consideration, including changes that were not addressed or affected by section 403 of the EGRRCPA.

### *Comments Regarding Eligibility and Treatment of Municipal Obligations as HQLA*

Some commenters requested that the agencies treat municipal obligations in the same manner as other asset types includable as HQLA, without imposing additional limitations, such as those in the Board's 2016 Amendments.[12]

Other commenters argued that municipal obligations should not be subject to certain requirements and limitations applicable to HQLA, such as the haircuts and composition limits generally applicable to level 2B liquid assets.[13] Alternatively, commenters argued that these requirements should be liberalized with respect to municipal obligations. Another commenter recommended that the definition of liquid and readily-marketable should be revised, because it would exclude from HQLA certain municipal obligation securities with a liquidity risk profile similar to other assets that currently qualify as level 2B liquid assets.

Section 403 requires the agencies to treat a municipal obligation as a level 2B liquid asset if the obligation, as of the calculation date, is liquid and readily-marketable and investment grade. The interim final rule implemented section 403, imposing only those restrictions on municipal obligations that also apply to other level 2B liquid assets.[14] In addition, the interim final rule defined ''liquid and readily-marketable'' as having the meaning given the term in 12 CFR 249.3, as specifically mandated by section 403. Accordingly, the agencies believe that it would not be appropriate to make changes to the restrictions applicable to municipal obligations as level 2B liquid assets or the definition of ''liquid and readily-marketable'' in this final rule.

[8] 83 FR 44451 (Aug. 31, 2018).

[9] The OCC's definition of ''investment grade'' under 12 CFR 1.2 provides that ''[i]nvestment grade means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.'' 12 CFR 1.2.

[10] 12 CFR 50.20 (OCC); 12 CFR 249.20 (Board); 12 CFR 329.20 (FDIC).

[11] Under the Board's rule, a liquid and readily-marketable security is a security that is traded in an active secondary market with: (1) More than two committed market makers; (2) a large number of non-market maker participants on both the buying and selling sides of transactions; (3) timely and observable market prices; and (4) a high trading volume. 12 CFR 249.3.

[12] For example, the 2016 Amendments limited the inclusion of municipal obligations in a Board-supervised institution's HQLA amount to 5 percent of the institution's total HQLA amount and limited the inclusion as eligible HQLA of municipal obligations of any single issuer to two times the average daily trading volume of all general obligation securities of the issuer over the previous four quarters.

[13] *See* 12 CFR 50.21 (OCC), 12 CFR 249.21 (Board), and 12 CFR 329.21 (FDIC).

[14] As part of the interim final rule, the Board rescinded the 2016 Amendments.

*Comments Regarding Broader Changes to the LCR Rule*

Several commenters, while supportive of the interim final rule, requested broad changes to the LCR rule beyond the treatment of municipal obligations as HQLA. For example, certain commenters argued that the agencies should tailor the application of the LCR rule based on the risk profile, operations, and complexity of the banking organization. These commenters argued that the current applicability thresholds are outdated and overly reliant on fixed asset thresholds. These commenters also urged the agencies to eliminate the $10 billion foreign exposure threshold as an interim measure.

One commenter recommended that the agencies revise the scope of assets recognized as HQLA. The commenter also requested that the agencies review the LCR rule's inflow and outflow assumptions, including its stability assumptions. This commenter also recommended revising the LCR rule to better reflect market realities, including by revising maturity assumptions, the treatment of retail trusts, and the definition of operational deposits. This commenter also recommended that the agencies either ''remove or increase the lag time'' associated with LCR disclosures.

The agencies are not adopting these broader proposed changes in this final rule.[15] The interim final rule was issued to implement section 403 of the EGRRCPA, and broader revisions to the LCR rule fall outside of the scope of the changes that the agencies sought comment on in the interim final rule.

## IV. Description of the Final Rule

For the reasons described above, the agencies are adopting the interim final rule as final without change.

The interim final rule's changes to the LCR rule provided covered companies greater flexibility in meeting the LCR rule's minimum requirements by expanding the types of assets that are eligible as HQLA. For FDIC- and OCC-regulated institutions, the interim final rule's changes marked the first time that such institution could treat any municipal obligations as HQLA. For Board-regulated institutions, those changes broadened the types of municipal obligations that could be included as HQLA. In particular, because the Board rescinded the 2016 Amendments as part of the interim final rule, municipal obligations were no longer required to be general obligation securities and, as a result, many issuances of revenue bonds could qualify as municipal obligations. In adopting the interim final rule as final without change, the final rule does not impact the changes described above.

This final rule does not otherwise affect which assets can count as HQLA under the LCR rule.

## V. Regulatory Analysis

*A. Administrative Procedure Act and Effective Date*

The Administrative Procedure Act (APA) generally requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date.[16] Therefore, the final rule will become effective on July 5, 2019. The interim final rule will remain in effect until the final rule becomes effective.

*B. Riegle Community Development and Regulatory Improvement Act*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[17] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each federal banking agency must consider any administrative burdens that such regulation would place on depository institutions and the benefits of such regulation. In addition, section 302(b) of the RCDRIA [18] requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause. The RCDRIA does not apply to the final rule because the rule does not impose any additional reporting, disclosures, or other new requirements on IDIs.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required.[19] Because the agencies previously determined that it was unnecessary to publish a general notice of proposed rulemaking for the interim final rule, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply to this final rule. Nonetheless, the agencies believe that, because size thresholds for covered companies under the final rule exceed the size limits of ''small entities'' as defined in section 601(6) of the RFA, small entities are not affected by the final rule.[20] Thus, the final rule does not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 [21] states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act and, therefore, no information collection request submission needs to be made to the OMB.

*E. Use of Plain Language*

Section 722 of the Gramm-Leach Bliley Act [22] requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. Having received no comments with respect to making the interim final rule easier to understand, the agencies are adopting the final rule without change.

*F. Unfunded Mandates Reform Act of 1995*

Consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act),[23] the OCC prepares an impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. Because the OCC did not publish a general notice of proposed rulemaking for the reasons described above in paragraph A of this section, the OCC has not prepared an impact statement for the final rule under the Unfunded Mandates Act.

## List of Subjects

*12 CFR Part 50*

Administrative practice and procedure, Banks, Banking, Liquidity, Reporting and recordkeeping requirements, Savings associations.

[15] The agencies have proposed revisions to the LCR rule in separate rulemakings that would address certain comments regarding the scope and applicability thresholds. *See supra* n. 3.

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

[17] 12 U.S.C. 4802(a).

[18] 12 U.S.C. 4802(b).

[19] 5 U.S.C. 603, 604.

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

[21] 44 U.S.C. 3501–3521.

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

[23] 2 U.S.C. 1532.

*12 CFR Part 249*

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

*12 CFR Part 329*

Administrative practice and procedure, Banks, Banking, Federal Deposit Insurance Corporation, Reporting and recordkeeping requirements.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**12 CFR Chapter I**

### PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ The interim final rule amending 12 CFR part 50 of chapter I, title 12 of the Code of Federal Regulations, which was published at 83 FR 44451 on August 31, 2018, is adopted as a final rule without change.

### Federal Reserve System

**12 CFR Chapter II**

### PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ The interim final rule amending 12 CFR part 249 of chapter II, title 12 of the Code of Federal Regulations, which was published at 83 FR 44451 on August 31, 2018, is adopted as a final rule without change.

### Federal Deposit Insurance Corporation

**12 CFR Chapter III**

### PART 329—LIQUIDITY RISK STANDARDS

■ The interim final rule amending 12 CFR part 329 of chapter III, title 12 of the Code of Federal Regulations, which was published at 83 FR 44451 on August 31, 2018, is adopted as a final rule without change.

Dated: May 20, 2019.

**Joseph M. Otting,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, May 28, 2019.

**Ann E. Misback,**

*Secretary of the Board.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 28, 2019.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2019–11715 Filed 6–4–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2019–0152; Special Conditions No. 25–744A–SC]**

### Special Conditions: Greenpoint Technologies, Inc., Boeing Model 787–8 Airplane; Dynamic Test Requirements for Single-Occupant, Side-Facing Seats With Airbag Devices in Shoulder Belts

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These amended special conditions are issued for the Boeing Model 787–8 airplane. This amendment removes reference to leg-flail airbags and adds reference to leg-flail devices installed on side-facing seats. This airplane, as modified by Greenpoint Technologies, Inc. (Greenpoint), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is single-occupant, side-facing seats with airbag devices in shoulder belts, and a floor-level, leg-flail-prevention device to limit the axial rotation of the upper leg. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Greenpoint Technologies, Inc. on June 5, 2019. Send comments on or before July 22, 2019.

**ADDRESSES:** Send comments identified by Docket No. FAA–2019–0152 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shannon Lennon, Airframe & Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because the substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. The FAA therefore finds it unnecessary to delay the effective date and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special

conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

**Background**

On June 15, 2017, Greenpoint applied for a supplemental type certificate for single-occupant, side-facing seats with airbag devices in shoulder belts, and a floor-level, leg-flail-prevention device to limit the axial rotation of the upper leg, installed in Boeing Model 787–8 airplanes. On May 2, 2019, Special Conditions No. 25–744–SC was published in the **Federal Register** (85 FR 18701). At the request of the applicant, this amended special conditions removes reference to leg-flail airbags and adds reference to leg-flail devices installed on side-facing seats.

The Boeing Model 787–8 airplane, which is a derivative of the Boeing Model 787 currently approved under Type Certificate No. T00021SE, is a twin-engine, transport-category airplane with a maximum takeoff weight of 502,500 pounds. The airplanes, as modified by Greenpoint, will have a business-jet interior with a maximum seating capacity of 41.

**Type Certification Basis**

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Greenpoint must show that the Boeing Model 787–8 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 787–8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 787–8 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

The Boeing Model 787–8 airplane, as modified by Greenpoint, will incorporate the following novel or unusual design features:

Single-occupant, side-facing seats with airbag devices in shoulder belts and a floor-level, leg-flail-prevention device to limit the axial rotation of the upper leg.

**Discussion**

Amendment 25–64, dated June 16, 1988, revised the emergency-landing conditions that must be considered in the design of the airplane. It revised the static-load conditions in § 25.561 and added a new § 25.562, requiring dynamic testing for all seats approved for occupancy during takeoff and landing. The intent was to provide an improved level of safety for occupants on transport-category airplanes. Because most seating on transport-category airplanes is forward-facing, the pass/fail criteria developed in Amendment 25–64 focused primarily on forward-facing seats. Therefore, the testing specified in the rule did not provide a complete measure of occupant injury in seats that are not forward-facing, although § 25.785 does require occupants of all seats that are occupied during taxi, takeoff, and landing not suffer serious injury as a result of the inertia forces specified in §§ 25.561 and 25.562.

For some time the FAA granted exemptions for the multiple-place side-facing-seat installations because the existing test methods and acceptance criteria did not produce a level of safety equivalent to the level of safety provided for forward- and aft-facing seats. These exemptions were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of the exemption issuance. The FAA also issued special conditions to address single-place side-facing seats because we believed that those conditions provided the same level of safety as for forward- and aft-facing seats.

Continuing concerns regarding the safety of side-facing seats prompted the FAA to conduct research to develop an acceptable method of compliance with §§ 25.562 and 25.785(b) for side-facing seat installations. That research has identified injury considerations and evaluation criteria in addition to those previously used to approve side-facing seats (see published report DOT/FAA/AR–09/41, July 2011). One particular concern that was identified during the FAA's research program, but not addressed in the previous special conditions, was the significant leg injuries that can occur to occupants of both single- and multiple-place side-facing seats. Because this type of injury does not occur on forward- and aft-facing seats, the FAA determined that, to achieve the level of safety envisioned in Amendment 25–64, additional requirements would be needed as compared to previously issued special conditions. Nonetheless, the research has now allowed the development of a single set of special conditions applicable to all fully side-facing seats.

On November 5, 2012, the FAA released PS–ANM–25–03–R1, ''Technical Criteria for Approving Side-Facing Seats,'' to update existing FAA certification policy on §§ 25.562 and 25.785(a) at Amendment 25–64 for single- and multiple-place side-facing seats. This policy addresses both the technical criteria for approving side-facing seats and the implementation of those criteria. The FAA methodology detailed in PS–ANM–25–03–R1 has been used to establish a new set of proposed special conditions.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to Boeing Model 787–8 airplanes modified by Greenpoint. Should Greenpoint apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00021SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only a certain novel or unusual design feature on one model of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 787–8 airplanes modified by Greenpoint.

In addition to the airworthiness standards in §§ 25.562 and 25.785, special conditions 1 and 2 apply to all side-facing seat installations, and special conditions 3 through 16 apply to side-facing seats equipped with an airbag system in the shoulder-belt system.

1. Additional requirements applicable to tests or rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. The longitudinal test(s) conducted in accordance with § 25.562(b)(2) to show compliance with the seat-strength requirements of § 25.562(c)(7) and (8), and these special conditions must have an ES–2re Anthropomorphic Test Dummy (ATD) (49 CFR part 572, subpart U) or equivalent, or a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent, occupying each seat position and including all items contactable by the occupant (*e.g.,* armrest, interior wall, or furnishing) if those items are necessary to restrain the occupant. If included, the floor representation and contactable items must be located such that their relative position, with respect to the center of the nearest seat place, is the same at the start of the test as before floor misalignment is applied. For example, if floor misalignment rotates the centerline of the seat place nearest the contactable item 8 degrees clockwise about the airplane x-axis, then the item and floor representations must be rotated by 8 degrees clockwise also to maintain the same relative position to the seat place. Each ATD's relative position to the seat after application of floor misalignment must be the same as before misalignment is applied. To ensure proper loading of the seat by the occupants, the ATD pelvis must remain supported by the seat pan, and the restraint system must remain on the pelvis and shoulder of the ATD until rebound begins. No injury-criteria evaluation is necessary for tests conducted only to assess seat-strength requirements.

b. The longitudinal test(s) conducted in accordance with § 25.562(b)(2), to show compliance with the injury assessments required by § 25.562(c) and these special conditions, may be conducted separately from the test(s) to show structural integrity. In this case, structural-assessment tests must be conducted as specified in paragraph 1a, above, and the injury-assessment test must be conducted without yaw or floor misalignment. Injury assessments may be accomplished by testing with ES–2re ATD (49 CFR part 572, subpart U) or equivalent at all places. Alternatively, these assessments may be accomplished by multiple tests that use an ES–2re at the seat place being evaluated, and a Hybrid-II ATD (49 CFR part 572, subpart B, as specified in § 25.562) or equivalent used in all seat places forward of the one being assessed, to evaluate occupant interaction. In this case, seat places aft of the one being assessed may be unoccupied. If a seat installation includes adjacent items that are contactable by the occupant, the injury potential of that contact must be assessed. To make this assessment, tests may be conducted that include the actual item, located and attached in a representative fashion. Alternatively, the injury potential may be assessed by a combination of tests with items having the same geometry as the actual item, but having stiffness characteristics that would create the worst case for injury (injuries due to both contact with the item and lack of support from the item).

c. If a seat is installed aft of structure (*e.g.,* an interior wall or furnishing) that does not have a homogeneous surface contactable by the occupant, additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different injury considerations and may require additional analysis or separate test(s) to evaluate.

d. To accommodate a range of occupant heights (5th percentile female to 95th percentile male), the surface of items contactable by the occupant must be homogenous 7.3 inches (185 mm) above and 7.9 inches (200 mm) below the point (center of area) that is contacted by the 50th percentile male size ATD's head during the longitudinal test(s) conducted in accordance with paragraphs a, b, and c, above. Otherwise, additional head-injury criteria (HIC) assessment tests may be necessary. Any surface (inflatable or otherwise) that provides support for the occupant of any seat place must provide that support in a consistent manner regardless of occupant stature. For example, if a shoulder-belt airbag system is used to mitigate injury risk, then it must be demonstrated by inspection to bear against the range of occupants in a similar manner before and after inflation. Likewise, the means of limiting lower-leg flail must be demonstrated by inspection to provide protection for the range of occupants in a similar manner.

e. For longitudinal test(s) conducted in accordance with § 25.562(b)(2) and these special conditions, the ATDs must be positioned, clothed, and have lateral instrumentation configured as follows:

i. ATD positioning—Lower the ATD vertically into the seat while simultaneously:

1. Aligning the midsagittal plane (a vertical plane through the midline of the body; dividing the body into right and left halves) with approximately the middle of the seat place.

2. Applying a horizontal x-axis direction (in the ATD coordinate system) force of about 20 lb (89 N) to the bottom of the feet of the ES–2re Hybrid-II, to compress the seat back cushion.

3. Keeping the lower and upper legs nearly horizontal by supporting at the bottom of the feet.

ii. Once all lifting devices have been removed from the ATD:

1. Rock it slightly to settle it in the seat.

2. Bend the knees of the ATD.

3. Separate the knees by about 4 inches (100 mm).

4. Set the ES–2re's head at approximately the midpoint of the available range of z-axis rotation (to align the head and torso midsagittal planes).

5. Position the ES–2re's arms at the joint's mechanical detent that puts them at approximately a 40 degree angle with respect to the torso. Position the Hybrid-II ATD hands on top of its upper legs.

6. Position the feet such that the centerlines of the lower legs are approximately parallel to a lateral vertical plane (in the airplane coordinate system).

iii. ATD clothing: Clothe each ATD in form-fitting, mid-calf-length (minimum) pants and shoes (size 11E) weighing about 2.5 lb (1.1 kg) total. The color of the clothing should be in contrast to the color of the restraint system. The ES–2re jacket is sufficient for torso clothing, although a form-fitting shirt may be used in addition if desired.

iv. ES–2re ATD lateral instrumentation: The rib-module linear slides are directional, *i.e.,* deflection occurs in either a positive or negative ATD y-axis direction. The modules must be installed such that the moving end of the rib module is toward the

front of the airplane. The three abdominal-force sensors must be installed such that they are on the side of the ATD toward the front of the airplane.

f. The combined horizontal/vertical test, required by § 25.562(b)(1) and these special conditions, must be conducted with a Hybrid II ATD (49 CFR part 572, subpart B, as specified in § 25.562), or equivalent, occupying each seat position.

g. Restraint systems:

i. If inflatable restraint systems are used, they must be active during all dynamic tests conducted to show compliance with § 25.562.

ii. The design and installation of seat-belt buckles must prevent unbuckling due to applied inertial forces or impact of the hands/arms of the occupant during an emergency landing.

2. Additional performance measures applicable to tests and rational analysis conducted to show compliance with §§ 25.562 and 25.785 for side-facing seats:

a. Body-to-body contact: Contact between the head, pelvis, torso, or shoulder area of one ATD with the adjacent-seated ATD's head, pelvis, torso, or shoulder area is not allowed. Contact during rebound is allowed.

b. Thoracic: The deflection of any of the ES–2re ATD upper, middle, and lower ribs must not exceed 1.73 inches (44 mm). Data must be processed as defined in Federal Motor Vehicle Safety Standards (FMVSS) 571.214.

c. Abdominal: The sum of the measured ES–2re ATD front, middle, and rear abdominal forces must not exceed 562 lbs (2,500 N). Data must be processed as defined in FMVSS 571.214.

d. Pelvic: The pubic symphysis force measured by the ES–2re ATD must not exceed 1,350 lbs (6,000 N). Data must be processed as defined in FMVSS 571.214.

e. Leg: Axial rotation of the upper-leg (femur) must be limited to 35 degrees in either direction from the nominal seated position. The leg-flail-prevention mechanism must:

i. Be shown to function as intended in consideration of post-structural deformation of the seat assembly.

ii. Retract such that it does not impede rapid egress of occupants.

f. Neck: As measured by the ES–2re ATD and filtered at CFC 600 as defined in SAE J211:

i. The upper-neck tension force at the occipital condyle (O.C.) location must be less than 405 lbs (1,800 N).

ii. The upper-neck compression force at the O.C. location must be less than 405 lbs (1,800 N).

iii. The upper-neck bending torque about the ATD x-axis at the O.C. location must be less than 1,018 in-lbs (115 Nm).

iv. The upper-neck resultant shear force at the O.C. location must be less than 186 lbs (825 N).

g. Occupant (ES–2re ATD) retention: The pelvic restraint must remain on the ES–2re ATD's pelvis during the impact and rebound phases of the test. The upper-torso restraint straps (if present) must remain on the ATD's shoulder during the impact.

h. Occupant (ES–2re ATD) support:

i. Pelvis excursion: The load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of its seat's bottom seat-cushion supporting structure.

ii. Upper-torso support: The lateral flexion of the ATD torso must not exceed 40 degrees from the normal upright position during the impact.

3. For seats with a shoulder-belt airbag system, the shoulder-belt airbag system must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th percentile male. The airbag systems in the shoulder belts must provide a consistent approach to energy absorption throughout that range of occupants. When the seat system includes an airbag system, that system must be included in each of the certification tests as it would be installed in the airplane. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a pregnant woman.

4. The airbag system in the shoulder belt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the shoulder belt.

5. The design must prevent the airbag system in the shoulder belt from being either incorrectly buckled or incorrectly installed, such that the airbag system in the shoulder belt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required injury protection.

6. It must be shown that the shoulder-belt airbag system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environmental conditions (vibrations, moisture, etc.) likely to occur in service.

7. Deployment of the shoulder-belt airbag system must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant whose belt is loosely fastened.

8. It must be shown that inadvertent deployment of the shoulder-belt airbag system, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants. This also includes preventing inadvertent airbag deployment from a static discharge.

9. It must be shown that the airbag system in the shoulder belt will not impede rapid egress of occupants 10 seconds after airbag deployment.

10. The shoulder-belt airbag system must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lighting, § 25.1316, and HIRF, § 25.1317, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

11. The shoulder-belt airbag system must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag system in the shoulder belt does not have to be considered.

12. It must be shown that the shoulder-belt airbag system will not release hazardous quantities of gas, sharp injurious metal fragments, or particulate matter into the cabin.

13. The shoulder-belt airbag system installation must be protected from the effects of fire such that no hazard to occupants will result.

14. A means must be available for a crewmember to verify the integrity of the shoulder-belt airbag system activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers that the loss of the airbag-system deployment function alone (*i.e.,* independent of the conditional event that requires the airbag-system deployment) is a major-failure condition.

15. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

16. The shoulder-belt airbag system, once deployed, must not adversely affect the emergency-lighting system

(*i.e.,* block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Des Moines, Washington, on May 30, 2019.

**Victor Wicklund,**

*Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.*

[FR Doc. 2019–11666 Filed 6–4–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2018–1058; Product Identifier 2018–CE–051–AD; Amendment 39–19646; AD 2019–10–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Pilatus Aircraft Ltd. Models PC–6, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–6–H1, and PC–6–H2 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as sheared or missing rivets on the horizontal stabilizer hinge bracket assemblies. The FAA is issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective July 10, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 10, 2019.

**ADDRESSES:** You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1058; or in person at Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for Docket No. FAA–2018–1058.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Pilatus Aircraft Ltd. Models PC–6, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–6–H1, and PC–6–H2 airplanes. The NPRM was published in the **Federal Register** on December 26, 2018 (83 FR 66175). The NPRM proposed to correct an unsafe condition for the specified products and was based on MCAI AD No. 2018–0217, dated October 10, 2018, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states:

> During a routine inspection, the rivets of the hinge bracket assemblies on a Pilatus PC–6 were found to be sheared or missing. Investigation results identified that this was most likely due to application of too much force to the ends of the horizontal stabilizer during ground handling.
>
> This condition, if not detected and corrected, could lead to failure of the primary horizontal stabilizer load path and consequent separation of the horizontal stabilizer, possibly resulting in loss of control of the aeroplane.
>
> To address this potential unsafe condition, Pilatus Aircraft Ltd issued the SB [service bulletin] to provide applicable inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the affected parts and the horizontal stabilizer front spar attachment area and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires, before installation, inspection of, and, depending on findings, corrective action(s) on, affected parts held as spare.

The amount of force to the ends of the horizontal stabilizer cannot be quantified; however, fleet experience shows that repetitive pushing or pulling on the horizontal stabilizer to move the airplane on the ground can overload the rivets. Although a root cause could not be determined, due to the severity of separation of a horizontal stabilizer, EASA determined that the corrective actions should be required for other airplanes of the same type design.

Pilatus Aircraft Ltd. had previously considered the small size of the original ''DO NOT PUSH'' markings and the significant chance of the markings being over-sprayed during a respray. As a result, Pilatus Aircraft Ltd. issued a service bulletin to specify replacing the smaller markings with new, larger placards. The FAA requires installing these placards in this AD.

The MCAI can be found in the AD docket on the internet at *https://www.regulations.gov/document?D=FAA-2018-1058-0002.*

### Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response the comment.

### Request To Add Omitted Section to Required Procedures

Pilatus Aircraft Ltd. requested that the FAA amend the required actions to include section H of the Accomplishment Instructions in Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–004, dated July 2, 2018. The commenter notes that section H was omitted and should be added to the final rule.

The FAA agrees with the commenter and has changed paragraph (f)(1)(i) to include section H.

### Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. The FAA determined that this change is consistent with the intent that was proposed in the NPRM for correcting the unsafe condition and does not add any additional burden upon the public than was already proposed in the NPRM. The FAA also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

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

Pilatus Aircraft Ltd. has issued PC–6 Service Bulletin No. 55–004, dated July 2, 2018. The service information contains procedures for inspecting the left-hand and right-hand horizontal stabilizer hinge bracket assemblies and, if any discrepancies are found, repairing or replacing any damaged rivets and screws. Pilatus Aircraft Ltd. has also issued PC–6 Service Bulletin No. 55–002, Revision. No. 1, dated February 18, 2016. This service information contains procedures for inspecting and repairing the horizontal stabilizer attachment hardware and installing four ''DO NOT PUSH'' placards. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

The FAA estimates that this AD will affect 30 products of U.S. registry. The FAA also estimates that it will take about 9 work-hours per product to comply with the inspection and placard requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $200 per product.

Based on these figures, the FAA estimates the cost of the inspection and placard requirements on U.S. operators to be $28,950, or $965 per product.

In addition, the FAA estimates the following to do any necessary follow-on actions: Each rivet replacement will take 2 work-hours, fastener replacement will take 3 work-hours, one hinge bracket assembly replacement will take 9 work-hours, and two hinge bracket assembly replacements will take 15 work-hours. The total estimated cost of parts will be $10,000. The FAA has no way of determining the number of products that may need replacement.

**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.

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2019–10–07 Pilatus Aircraft Ltd.:** Amendment 39–19646; Docket No. FAA–2018–1058; Product Identifier 2018–CE–051–AD.

**(a) Effective Date**

This AD becomes effective July 10, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–6–H1, PC–6–H2 airplanes, all serial numbers, certificated in any category.

**Note 1 to paragraph (c):** These airplanes may also be identified as Fairchild Republic Company airplanes, Fairchild Industries airplanes, Fairchild Heli Porter airplanes, or Fairchild-Hiller Corporation airplanes.

**(d) Subject**

Air Transport Association of America (ATA) Code 55: Stabilizers.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as sheared or missing rivets on the horizontal stabilizer hinge bracket assemblies. The FAA is issuing this AD to prevent failure of the primary horizontal stabilizer load path, which could lead to separation of the horizontal stabilizer and result in loss of control of the airplane.

**(f) Actions and Compliance**

Unless already done, do the following actions in paragraphs (f)(1) and (2).

(1) Within the next 100 hours time-in-service after July 10, 2019 (the effective date of this AD) or within the next 12 months after July 10, 2019 (the effective date of this AD), whichever occurs first:

(i) Inspect the left-hand and the right-hand horizontal stabilizer hinge bracket assemblies for cracks, loose screws and rivets, sheared rivets, missing rivets, and looseness of the electrical bonding strap, and inspect the top and bottom screws at each hinge bracket. Repair or replace any parts with discrepancies before further flight. You must do the actions required by this paragraph by following sections C through H of the Accomplishment Instructions–Part 1–On Aircraft in Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–004, dated July 2, 2018.

(ii) Install four ''DO NOT PUSH'' placards, part number 110.71.06.847 or 110.71.06.848, on the horizontal stabilizer by following section G of the Accomplishment Instructions—Aircraft in Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–002, Revision. No. 1, dated February 18, 2016.

(2) After July 10, 2019 (the effective date of this AD), do not install a horizontal stabilizer on any airplane unless it has been inspected as specified in paragraph (f)(1)(i) of this AD and found to be free of discrepancies or all discrepancies have been repaired or replaced.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must instead be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA, or the European Aviation Safety Agency (EASA).

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2018–0217, dated October 10, 2018, for related information.

**(i) Material Incorporated by Reference**

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

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

(i) Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–002, Revision. No. 1, dated February 18, 2016.

(ii) Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 55–004, dated July 2, 2018.

(3) For Pilatus Aircraft Ltd service information identified in this AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1058.

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

Issued in Kansas City, Missouri, on May 23, 2019.

**Melvin J. Johnson,**

*Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.*

[FR Doc. 2019–11747 Filed 6–4–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0916; Product Identifier 2018–NE–33–AD; Amendment 39–19643; AD 2019–10–04]**

**RIN 2120–AA64**

## Airworthiness Directives; BRP-Rotax GmbH & Co KG Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain BRP-Rotax GmbH & Co KG (Rotax) 912 and 914 model engines. This AD was prompted by power loss and engine revolutions per minute (RPM) drop on certain Rotax 912 and 914 model engines due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies resulting in partial wear on the rocker arm ball socket and possible malfunction of the valve. This AD requires one-time inspection and, depending on the findings, replacement of the affected parts with parts eligible for installation. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 10, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 10, 2019.

**ADDRESSES:** For service information identified in this final rule, contact BRP-Rotax GmbH & Co KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* internet: *www.flyrotax.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0916.

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0916; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wego Wang, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Rotax 912 and 914 model engines. The NPRM published in the **Federal Register** on November 6, 2018 (83 FR 55502). The NPRM was prompted by power loss and engine RPM drop on certain Rotax 912 and 914 model engines due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies resulting in partial wear on the rocker arm ball socket and possible malfunction of the valve. The NPRM proposed to require a one-time inspection and, depending on the findings, replacement of the affected parts with parts eligible for installation. We are issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0208, dated October 13, 2017 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Power loss and engine RPM drop have been reported on Rotax 912/914 engines in service. It has been determined that, due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies, manufactured between 08 June 2016 and 02 October 2017 inclusive, partial wear on the rocker arm ball socket

may occur, which may lead to malfunction of the valve train.

This condition, if not detected and corrected, may lead to rough engine operation and loss of power, possibly resulting in a forced landing, with consequent damage to the aeroplane and injury to occupants.

**Revision to Applicability Section**

We revised paragraph (c)(4), in the Applicability section of this AD, to refer to ''Rotax 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 engines (all S/Ns) on which a valve push-rod assembly has been replaced with one manufactured between June 8, 2016, and October 2, 2017,'' rather than ''Rotax 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 engines (all S/Ns) on which a valve push-rod assembly has been replaced between June 8, 2016, and the effective date of this AD,'' as proposed in the NPRM. This change clarifies the applicability and is consistent with the MCAI and with Rotax Service Bulletin (SB) SB–912 i-008 R1/SB–912–070 R1/SB–914–052 R1 (single document), Revision 1, dated October 12, 2017. Our proposed wording would have unnecessarily extended the applicability of this AD to all valve push-rod assemblies that were replaced on the affected Rotax engines from October 2, 2017 until the effective date of this AD.

**Comments**

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

**Conclusion**

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

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

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

We reviewed Rotax SB SB–912 i-008 R1/SB–912–070 R1/SB–914–052 R1 (single document), Revision 1, dated October 12, 2017. The SB describes procedures for inspection and replacement of the valve push-rod assembly and the left and right rocker arms. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

We estimate that this AD affects 150 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspect the push-rod rocker arm ball sockets | 1 work-hour × $85 per hour = $85 ..... | $0 | $85 | $12,750 |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We estimate that 50 engines will need this replacement.

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace the valve push-rod assembly and rocker arm ball sockets. | 0.5 work-hours × $85 per hour = $42.50 ..... | $3,000 | $3,042.50 | $152,125 |

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2019–10–04 BRP-Rotax GmbH & Co KG (formerly BRP-Powertrain GmbH & Co KG; Bombardier-Rotax GmbH & Co KG; Bombardier-Rotax GmbH):** Amendment 39–19643; Docket No. FAA–2018–0916; Product Identifier 2018–NE–33–AD.

**(a) Effective Date**

This AD is effective July 10, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to:

(1) BRP-Rotax GmbH & Co KG (Rotax) 912 F2, 912 F3, and 912 F4 engines, with serial number (S/N) 4 413 066 to 4 413 067, inclusive; and S/N 4 413 101 to 4 413 111, inclusive;

(2) Rotax 912 S2, 912 S3, and 912 S4 engines, with S/Ns 9 563 826 to 9 563 849, inclusive; S/Ns 9 564 301 to 9 564 508, inclusive; and S/N 9 564 510 to 9 564 534, inclusive;

(3) Rotax 914 F2, 914 F3, and 914 F4 engines, with S/Ns 4 421 581 to 4 421 597, inclusive; and S/N 4 421 701 to 4 421 833, inclusive; and

(4) Rotax 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 engines (all S/Ns) on which a valve push-rod assembly has been replaced with one manufactured between June 8, 2016, and October 2, 2017.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8530, Reciprocating Engine Cylinder Section.

**(e) Unsafe Condition**

This AD was prompted by power loss and engine revolutions per minute drop on Rotax 912 and 914 model engines due to a quality control deficiency in the manufacturing process of certain valve push-rod assemblies resulting in partial wear on the rocker arm ball socket and possible malfunction of the valve. We are issuing this AD to prevent failure of the valve push-rod assembly and the left and right rocker arms. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) Visually inspect the push-rod ball sockets of each valve push-rod assembly in accordance with the Accomplishment Instructions, paragraph 3.1.2, of BRP-Rotax Service Bulletin (SB) SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (single document), Revision 1, dated October 12, 2017, and within the following compliance times.

(i) For engines with 160 engine flight hours (FHs) or fewer since new, inspect before exceeding 170 FHs since new, or within three months after the effective date of this AD, whichever occurs first.

(ii) For engines with greater than 160 engine FHs since new, inspect within 10 FHs, or three months after the effective date of this AD, whichever occurs first.

(2) If the inspection required by paragraph (g)(1) of this AD finds a black surface color on a valve push-rod assembly, part number (P/N) 854861, then before further flight, remove the valve push-rod assembly and the left and right rocker arm ball sockets, P/Ns 854383 and 854393, from service, and replace with parts eligible for installation.

**(h) Installation Prohibition**

After the effective date of this AD, do not install a valve push-rod assembly, P/N 854861, that was manufactured between June 8, 2016, and October 2, 2017, or that exhibits a black surface color on the push-rod rocker arm ball sockets, on any engine.

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

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

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

**(j) Related Information**

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2017–0208, dated October 13, 2017, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0916.

**(k) Material Incorporated by Reference**

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

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

(i) Rotax Service Bulletin (SB) SB–912 i–008 R1/SB–912–070 R1/SB–914–052 R1 (single document), Revision 1, dated October 12, 2017.

(ii) [Reserved]

(3) For Rotax service information identified in this AD, contact BRP-Rotax GmbH & Co KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* internet: *www.flyrotax.com.*

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

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

Issued in Burlington, Massachusetts, on May 24, 2019.

**Karen M. Grant,**

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

[FR Doc. 2019–11739 Filed 6–4–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Parts 740 and 746

**[Docket No. 190524473–9473–01]**

**RIN 0694–AH87**

## Restricting the Temporary Sojourn of Aircraft and Vessels to Cuba

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) further limits the types of aircraft that are

authorized to fly to Cuba and the types of vessels that are authorized to sail to Cuba on temporary sojourn. Specifically, this rule amends License Exception Aircraft, Vessels and Spacecraft (AVS) in the Export Administration Regulations (EAR) to remove the authorization for the export or reexport to Cuba of most non-commercial aircraft and passenger and recreational vessels on temporary sojourn. Additionally, this rule amends the licensing policy for exports and reexports to Cuba of aircraft and vessels on temporary sojourn to establish a general policy of denial absent a foreign policy or national security interest as determined by the U.S. Government. Consequently, private and corporate aircraft, cruise ships, sailboats, fishing boats, and other similar aircraft and vessels generally will be prohibited from going to Cuba. BIS is making these amendments to support the Administration's national security and foreign policy decision to restrict non-family travel to Cuba to prevent U.S. funds from enriching the Cuban regime, which continues to repress the Cuban people and provides ongoing support to the Maduro regime in Venezuela. These amendments are consistent with the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba. signed by the President on June 16, 2017.

**DATES:** This rule is effective June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Alan Christian, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, by email at *Alan.Christian@bis.doc.gov,* or by phone at (202) 482–4252.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 16, 2017, President Trump announced changes to U.S. policy toward Cuba intended to enhance compliance with United States law; channel funds toward the Cuban people and away from the regime; encourage the Cuban government to address oppression and human rights abuses; further the national security and foreign policy interests of the United States, as well as express solidarity with the Cuban people; and lay the groundwork to improve human rights, encourage the rule of law, foster free markets and free enterprise, and promote democracy in Cuba. The President's policy is stated in the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM–5), dated June 16, 2017 (82 FR 48875, October 20, 2017). NSPM–5 also directs the Secretary of Commerce, as well as the Secretaries of State and the Treasury, to take certain actions to implement the President's Cuba policy. On November 9, 2017, the Department of Commerce's Bureau of Industry and Security (BIS) and the Department of the Treasury's Office of Foreign Assets Control (OFAC) published rules in the **Federal Register** to implement certain portions of NSPM–5 (82 FR 51983 and 82 FR 51998, respectively). The Department of State also published the List of Restricted Entities and Subentities Associated with Cuba (Cuba Restricted List) (82 FR 52089), which is used by BIS in reviewing license applications submitted pursuant to the Export Administration Regulations (EAR) (15 CFR parts 730–774) and by OFAC in prohibiting certain direct financial transactions pursuant to the Cuban Assets Control Regulations (CACR) (31 CFR part 515). Additional entities and subentities have subsequently been added to the Cuba Restricted List (83 FR 57523, 84 FR 8939, and 84 FR 17228. Please also see the Department of State's website at: *https://www.state.gov/cuba-sanctions/cuba-restricted-list/*).

On April 17, 2019, the White House announced that the Administration is holding the Cuban regime accountable for repressing the Cuban people and supporting the Maduro regime in Venezuela through multiple actions, including by restricting non-family travel to Cuba, or in other words, ''veiled tourism.'' Consequently, BIS is amending License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 of the EAR and the licensing policy for Cuba in § 746.2 to generally prohibit non-commercial aircraft from flying to Cuba and passenger and recreational vessels from sailing to Cuba.

## Amendments To License Exception Aircraft, Vessels and Spacecraft (AVS)

Consistent with the embargo of Cuba, BIS authorization in the form of a license or license exception is required for the export or reexport to Cuba of all items subject to the EAR. § 746.2(a)(1) of the EAR identifies the license exceptions, or portions thereof, that are available for exports and reexports to Cuba, including paragraphs (a) and (d) of License Exception AVS in § 740.15 for, respectively, certain aircraft and vessels on temporary sojourn. Paragraph (a)(2) of License Exception AVS contains the terms and conditions that are specific to U.S. registered aircraft. This rule removes Cuba from eligibility for paragraph (a)(2)(ii), making general aviation (*e.g.,* private and corporate aircraft) and certain other aircraft ineligible for License Exception AVS when destined for Cuba. The only civil aircraft of U.S. registry that remain eligible for License Exception AVS when destined for Cuba are commercial aircraft operating under Air Carrier Operating Certificates or certain other Federal Aviation Administration certificates or specifications identified in paragraph (a)(2)(i). Making non-commercial aircraft ineligible for License Exception AVS when destined for Cuba supports the President's policy to restrict non-family travel to Cuba.

Additionally, this rule amends paragraph (a)(2)(i) of § 740.15 to make air ambulances operating under 14 CFR part 135 eligible for License Exception AVS. BIS routinely approved license applications for air ambulances to fly to Cuba on temporary sojourn before Cuba became eligible for paragraph (a)(2)(ii) in 2015. Given their use in evacuating individuals in medical distress with minimal advanced notice, air ambulances will remain eligible for the license exception when destined to Cuba.

Paragraph (d)(6) of License Exception AVS contains Cuba-specific terms and conditions for the temporary sojourn of vessels to Cuba. This rule amends paragraph (d)(6) to remove passenger and recreational vessels from eligibility for temporary sojourn to Cuba. Now only cargo vessels for hire for use in the transportation of separately authorized items are eligible for export or reexport to Cuba on temporary sojourn provided all of the other terms and conditions of License Exception AVS are met. This rule also simplifies and makes conforming changes to paragraph (d)(6) of License Exception AVS. Making passenger and recreational vessels ineligible for License Exception AVS when destined for Cuba also supports the President's policy to restrict non-family travel to Cuba.

## Amendment to Cuba Licensing Policy

When a license exception is not available, § 746.2(b) of the EAR explains that license applications for the export or reexport of items to Cuba are subject to a general policy of denial unless otherwise specified in that paragraph. This rule redesignates paragraph (b)(3)(ii) as (b)(4) and revises the text of the new paragraph (b)(4) to explain that applications for the export or reexport of most aircraft or vessels on temporary sojourn to Cuba are subject to a general policy of denial unless the export or reexport is consistent with the foreign policy or national security interests of

the United States. Applications for the temporary sojourn of aircraft operated by certificated air carriers or cargo vessels for hire that are not eligible for License Exception AVS will be reviewed on a case-by-case basis, such as cargo vessels that may need to remain in Cuba beyond the 14-day limit in paragraph (d) of License Exception AVS due to port congestion. A note to paragraph (b)(4) explains that applications for private and corporate aircraft, cruise ships, sailboats, fishing vessels, and other similar aircraft and vessels will generally be denied. As a licensing policy of denial indicates, BIS will only issue licenses for the temporary sojourn to Cuba of non-commercial aircraft or non-cargo vessels if such action is consistent with the national security and foreign policy interests of the United States, such as the temporary sojourn of vessels for use in oil spill response. Given the Administration's stated objectives of holding the Cuban regime accountable for its repression of the Cuban people, including by restricting non-family travel to Cuba, such licenses will be issued only in extraordinary circumstances. Thus, non-commercial aircraft and non-cargo vessels generally will be prohibited from going to Cuba.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. This rule supports the Administration's national security and foreign policy objectives per the direction provided to agencies in National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM–5). National Security Presidential Memoranda are used to promulgate Presidential decisions on national security matters. Thus, the primary direct benefit of this rule is to improve national security. Restricting non-family travel to Cuba will limit aircraft and vessel traffic, thus steering money away from the Cuban regime and its military and security services who control the tourism industry in Cuba. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O. 13771. See *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, Public Law 115–232, tit. 17, subtitle B, 132 Stat. 2208 (2018), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

6. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to minimally increase and have limited impact on the existing estimates. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

**List of Subjects**

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 746*

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

## PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** Pub. L. 115–232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*). 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 2. Section 740.15 is amended by:
■ a. Revising paragraphs (a)(2)(i) introductory text, (a)(2)(ii) introductory text, and (d)(6);
■ b. Redesignate Note to paragraph (d) as Note 1 to paragraph (d);
■ c. Revise the newly redesignated Note 1 to paragraph (d).

The revisions read as follows:

**§ 740.15 Aircraft, Vessels and Spacecraft (AVS).**

* * * * *

(*a*) * * *

(2) *U.S. registered aircraft.* (i) A civil aircraft of U.S. registry operating under an Air Carrier Operating Certificate, Commercial Operating Certificate, or Air Taxi Operating Certificate issued by the Federal Aviation Administration (FAA), conducting flights under operating specifications approved by the FAA pursuant to 14 CFR part 129, or air ambulances operating under 14 CFR part 135, may depart from the United States under its own power for any destination, provided that:

* * * * *

(ii) Any other operating civil aircraft of U.S. registry may depart from the United States under its own power for any destination, except to Cuba or a destination in Country Group E:1 (see supplement no. 1 to this part) (flights to these destinations require a license), provided that:

* * * * *

(*d*) * * *

(6) *Cuba, eligible vessels and purposes.* For Cuba, only cargo vessels for hire for use in the transportation of items are eligible for this paragraph (d).

**Note 1 to paragraph (d).** *A vessel exported or reexported to a country pursuant to this paragraph (d) may not remain in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license or the United States.*

* * * * *

## PART 746—[AMENDED]

■ 3. The authority citation for 15 CFR part 746 continues to read as follows:

**Authority:** Pub. L. 115–232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 9, 2018, 83 FR 21839 (May 10, 2018); Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 4. Section 746.2 is amended by:

■ (a) Redesignating paragraph (b)(3)(ii) as paragraph (b)(4);

■ (b) Adding and reserving new paragraph (b)(3)(ii); and

■ (c) Revising newly redesignated paragraph (b)(4).

The addition and revision read as follows:

**§ 746.2 Cuba.**

* * * * *

(b) * * *

(ii) [Reserved]

(4) *Temporary sojourns of aircraft and vessels.* Applications for exports or reexports of aircraft or vessels on temporary sojourn to Cuba, other than aircraft operated by certificated air carriers or cargo vessels for hire, are subject to a general policy of denial unless consistent with the foreign policy or national security interests of the United States. Applications for exports or reexports of aircraft operated by certificated air carriers or cargo vessels for hire on temporary sojourn to Cuba may be authorized on a case-by-case basis.

**Note 1 to paragraph (b)(4):** Applications for exports or reexports of private and corporate aircraft, cruise ships, sailboats, fishing vessels, and other similar aircraft and vessels on temporary sojourn to Cuba will generally be denied.

* * * * *

Dated: May 31, 2019.

**Richard E. Ashooh,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2019–11777 Filed 6–4–19; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF STATE

## 22 CFR Part 42

**[Public Notice: 10641]**

**RIN 1400–AE74**

## Visas: Diversity Immigrants

**AGENCY:** State Department.

**ACTION:** Interim final rule; notice of request for public comment.

**SUMMARY:** This interim final rule is promulgated to require alien petitioners for the Diversity Visa Program to provide certain information from a valid, unexpired passport on the electronic entry form.

**DATES:** This interim final rule is effective June 5, 2019. The Department of State will accept comments up to July 5, 2019.

**ADDRESSES:** You may submit comments by the either of the following methods:

*Internet:* At *www.Regulations.gov,* you can search for the document using the Docket Number DOS–2019–0014 or using the notice RIN 1400–AE74.

*Email:* Taylor Beaumont, Acting Chief, Department of State, *VisaRegs@state.gov.*

**FOR FURTHER INFORMATION CONTACT:** Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485–8910, *VisaRegs@state.gov.*

**SUPPLEMENTARY INFORMATION:**

### What changes are in the amended rule?

The Diversity Visa Program (''DV Program'') is administered annually by the Department of State (''Department''). Section 203(c) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1153(c), provides for a class of immigrants known as ''diversity immigrants'' from countries with historically low rates of immigration to the United States. An estimated 14 million aliens register annually for the DV Program through an electronic entry form. The entry form collects information on the petitioner's full name; date and place of birth; gender; native country, if different from place of birth; current mailing address; and location of the consular post where the diversity visa should be adjudicated, if the petitioner is selected through the DV lottery. The electronic entry form also collects information about the names, dates and places of birth for the petitioner's spouse and children. The entry process is open to all aliens who are natives of ''low-admission'' countries without numerical limitation, defined as countries with fewer than 50,000 natives admitted to the United States during the most recent five-year period. After the close of the DV Program entry period, petitioners are selected through a randomized computer drawing (''selectees'') for consideration for one of the 50,000 available diversity visa numbers. While INA 201(d) authorizes allocation of 55,000 diversity visas annually, 5,000 of those visas are allocated each year for use under the Nicaraguan Adjustment and Central American Relief Act. See Public Law 105–100, § 203(d) (INA § 201 note) (1997). Selectees may then apply for a diversity visa or, if present in the United States, apply for adjustment of status. To qualify for a visa, these selectees must meet certain requirements, including those provided for at INA 203(c), 8 U.S.C. 1153(c).

Section 204(a)(1)(I)(iii) of the INA, 8 U.S.C. 1154(a)(1)(I)(iii), vests the Secretary of State with authority to set by regulation the information and documentary evidence to support a petition for entry into the DV Program. The requirements are set out in 22 CFR 42.33.

With this rule, the Department is amending 22 CFR 42.33(b)(1) to require the petitioner to include on the electronic diversity visa entry form the unique serial or issuance number associated with the petitioner's valid, unexpired passport; country or authority of passport issuance; and passport expiration date. These requirements will apply only to the principal petitioner and not derivatives listed on the entry form. These requirements apply unless the petitioner is either stateless, a national of a Communist-controlled country and unable to obtain a passport from the government of the Communist-controlled country, or the beneficiary of an individual waiver approved by the Secretary of Homeland Security and the Secretary of State, consistent with the passport waivers for immigrant visa applicants provided for in 22 CFR 42.2(d), (e), and (g)(2). A petitioner who does not have a passport and is either stateless, is a national of a Communist-controlled country and unable to obtain a passport from the government of the Communist-controlled country, or has an individual waiver of the passport

requirement from the Secretary of Homeland Security and the Secretary of State, must indicate that he or she falls into one of these three circumstances on the electronic entry form, instead of providing passport information. The requirements for information from a valid passport will not be waived under any other circumstances.

The Department is also clarifying that failure to accurately include any information required by 22 CFR 42.33(b)(1) and (2) will result in mandatory disqualification of the petitioner for that fiscal year. The existing regulations require the petitioner to submit specific information, including, but not limited to: Name, date of birth, and place of birth for the principal petitioner and any relatives that may accompany the petitioner, if selected to apply for a diversity visa, as well as a digital photo. While these are currently requirements for the diversity visa entry form, existing regulations do not make clear the consequence for failure to provide the information. The revised regulation clarifies that failure to provide the required information, including a compliant photograph, will result in the disqualification of the entry, the petitioner, and derivatives from the DV Program for that fiscal year.

**Why is the Department promulgating this rule?**

The Department has historically encountered significant numbers of fraudulent entries for the DV Program each year, including entries submitted by criminal enterprises on behalf of individuals without their knowledge. Individuals or entities that submit unauthorized entries will often contact unwitting individuals whose identities were used on selected DV Program entries, inform them of the opportunity to apply for a diversity visa, and hold the entry information from the named petitioner in exchange for payment. Requiring that each entry form include a valid passport number at the time of the DV Program entry will make it more difficult for third parties to submit unauthorized entries, because third parties are less likely to have individuals' passport numbers. Entries submitted by unauthorized third parties using a duplicative passport number will also be easily identified and automatically disqualified.

The Department is also adding a sentence to the regulation to clarify that entries, and the individual identified as the entrant, are disqualified if they fail to include all required information and comply with instructions. This will provide increased transparency to DV Program entrants who might question why their entry was disqualified, by explaining that disqualification will result from failure to submit required information. While all DV entrants must submit a completed entry form to qualify for selection in the DV lottery, current instructions are not clear that failure to provide that information results in mandatory disqualification. The information collected on the entry form is vital to the integrity of the DV Program, by ensuring the Department's ability to match the identity of DV lottery selectees and diversity visa applicants. Also, entry forms must be complete and accurate to ensure that the Department is selecting entries from individuals who may be eligible for visa issuance. Providing clear notice that failure to accurately provide required information will result in disqualification will reduce the number of incomplete forms and reduce entries from individuals who will not be eligible for visas, for example, because they cannot provide the required information.

**Regulatory Findings**

*Administrative Procedure Act*

The Department is publishing this rule as an interim final rule because it is exempt from notice and comment under the foreign affairs exception of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(a). This rule clearly and directly impacts a foreign affairs function of the United States. *See City of N.Y.* v. *Permanent Mission of India to the U.N.,* 618 F.3d 172, 202 (2d Cir. 2010). Specifically, as explained below, this regulation pertains to a visa program which serves as a clear tool of diplomacy and outreach to countries around the world. Furthermore, this rule addresses a vulnerability in the current application process by making it more difficult for third parties to submit fraudulent or unauthorized entries, a practice that has significant negative consequences.

Under Section 204(a)(1)(I) of the INA, the Secretary has the authority to determine the information or documents required for the diversity visa application and prescribe regulations necessary to carry out the DV Program. This rule will add a requirement that foreign nationals seeking to enter the DV Program must provide valid passport information at the time of DV Program entry.

The DV Program was established to diversify the immigrant population in the United States, but it also serves as an outreach tool, as its focus is on building relations with foreign populations around the world, particularly with diversity visa eligible countries. Diversity visa-eligible countries qualify for that status based on limited immigration to the United States by nationals of the country. Consequently, the DV Program is an important public diplomacy tool for the Department of State, because it offers foreign nationals an opportunity to immigrate to the United States without having to qualify under a more targeted family-based or employment-based classification. This opportunity helps create allies and goodwill overseas, while simultaneously promoting U.S. foreign policy interests. A program thus tailored to foster allies and goodwill overseas clearly qualifies as the exercise of diplomacy. Therefore, this regulation is exempt from 5 U.S.C. 553 the APA because it involves a foreign affairs function of the United States.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Because this interim final rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, consistent with the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule only regulates individual petitioners for the DV Program and does not regulate any small entities or businesses.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Office of Information and Regulatory Affairs has determined that this is not a major rule as defined by 5 U.S.C. 804.

*Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is a significant, though not economically significant, regulatory action under Section 3(f) of Executive Order 12866.

From 2016 to 2018, the average number of entrants for the DV Program each year was 14,589,023. The Department estimates that, on average, responding to this information request will take approximately 5 minutes, which includes gathering the passport and supplying the number. This estimate does not account for the effort needed to acquire a passport for those individuals who do not already have a passport, and the Department cannot provide a greater estimate of the time required to do that given the varied processes in foreign countries to obtain a passport. Using the average hourly wage for all private, non-farm, payrolls as calculated by the Bureau of Labor Statistics for March 2019, $27.70 multiplied by a factor of 1.479 (to account for overhead costs) gives a fully-loaded wage of $40.97. Thus the opportunity costs associated with the time burden to supply the information for this collection are approximately $49,809,356. This burden does not account for the capital costs associated with acquiring the passport for any individuals who do not already have one. The Department acknowledges that some portion of the applicant population will need to procure a passport, but has no way of estimating how many applicants this would apply to and similarly does not have data indicating distributional impacts of this requirement. The benefits of enhancing the requirements to enter the DV Program, while difficult to quantify, will include reducing fraud and unauthorized entries on behalf of unwitting individuals that could result in disqualifying the victim.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

The Department invites comment on any increase in burden imposed by the proposed collection of information. Comments are encouraged and will be accepted for 30 days from the publication date of the interim final rule. All submissions received must include the OMB Control Number 1405–0153 in the body of the letter and the agency name. 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.

**Abstract of Proposed Collection**

The Department of State utilizes the Electronic Diversity Visa (''EDV'') Entry Form to elicit information necessary to establish the eligibility of the petitioner for the DV Program. The two primary requirements of the program are: (1) The petitioner is a native of a low admission country, and (2) has at least a high school education or its equivalent, or within five years of the date of an application for a visa has two years of work experience in an occupation which requires at least two years of training or experience. This rule proposes to amend the EDV Entry Form to require that entrants provide information for a valid, unexpired passport. The Department of State randomly selects qualified entrants for further participation in the program.

**Methodology**

The EDV Entry Form is available online at *www.dvlottery.state.gov* and can only be submitted electronically during the annual entry period.

- *Title of Information Collection:* Electronic Diversity Visa Entry Form
- *OMB Control Number:* 1405–0153
- *Type of Request:* Revision to a Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–5501
- *Respondents:* Electronic Diversity Visa Entry Form Respondents
- *Estimated Number of Respondents:* 14,589,023
- *Estimated Number of Responses:* 14,589,023
- *Average Time per Response:* 35 minutes
- *Total Estimated Burden Time:* 8,510,263 hours
- *Frequency:* Annually
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

**List of Subjects in 22 CFR Part 42**

Immigration; Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 42 as follows:

## PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 is revised to read as follows:

**Authority:** 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1151; 8 U.S.C. 1153–1154; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. In § 42.33, add paragraphs (b)(1)(viii) and (ix) to read as follows:

**§ 42.33 Diversity immigrants.**

* * * * *

(b) * * *

(1) * * *

(viii) The unique serial or issuance number associated with the petitioner's valid, unexpired passport, country or authority of passport issuance, and expiration date, unless the petitioner would be exempt from the passport requirement pursuant to 22 CFR 42.2(d), (e), or (g)(2).

(ix) Failure to accurately include any information or documents required by paragraphs (b)(1)(i) through (viii) or paragraph (b)(2) of this section will result in disqualification of the entry for that fiscal year.

* * * * *

**Carl C. Risch,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. 2019–11762 Filed 6–4–19; 8:45 am]

BILLING CODE 4710–06–P

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 515**

## Cuban Assets Control Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to implement portions of the President's foreign policy toward Cuba. This amendment removes an authorization for group people-to-people educational travel and provides a ''grandfathering'' provision to authorize certain group people-to-people educational travel that previously was authorized where the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving accommodation) prior to June 5, 2019.

**DATES:** *Effective:* June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Assistant Director for Licensing, 202–622–2480, Assistant Director for Regulatory Affairs, 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, 202–622–2410.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (*www.treasury.gov/ofac*).

### Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the Regulations), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301–41). OFAC has amended the Regulations on numerous occasions. In particular, on November 9, 2017, OFAC, the Department of Commerce's Bureau of Industry and Security, and the Department of State (State) took coordinated actions to implement National Security Presidential Memorandum–5, ''Strengthening the Policy of the United States Toward Cuba,'' signed by the President on June 16, 2017 (NSPM–5). Among other things, in accordance with section 3(b)(ii) of NSPM–5, OFAC amended § 515.565(b) to require that people-to-people educational travel be conducted under the auspices of an organization that is subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact (group people-to-people educational travel) (82 FR 51998).

On April 17, 2019, National Security Advisor Ambassador John Bolton delivered a foreign policy address (April 2019 Address) announcing regulatory changes to further implement NSPM–5 and the President's foreign policy toward Cuba. Among other changes, the April 2019 Address announced that the Department of the Treasury would further restrict non-family travel.

In accordance with the April 2019 Address, OFAC is amending § 515.565 to remove the authorization for group people-to-people educational travel in § 515.565(b). OFAC is adding a ''grandfathering'' provision in § 515.565(b) to authorize certain group people-to-people educational travel that previously was authorized where the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving accommodation) prior to June 5, 2019. Finally, OFAC is adding a Note to § 515.572(a)(2) highlighting the fact that the export or reexport of vessels or aircraft providing carrier services under § 515.572(a)(2) requires separate authorization from the Department of Commerce.

### Public Participation

Because the amendments of the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

### Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and § 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

### List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banking, Blocking of assets, Cuba, Financial transactions, Reporting and recordkeeping requirements, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

## PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

**Authority:** 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Amend § 515.565 by:

■ a. Redesignating the Note to paragraphs (a) and (b) as Note 4 to paragraph (a);

■ b. Revising the newly redesignated Note 4 to paragraph (a);

■ c. Revising paragraph (b); and

■ d. In paragraph (g), remove the phrase ''general licenses'' and add in its place ''general license'' and remove the text ''or (b)''.

The revisions to read as follows:

**§ 515.565 Educational activities.**

(a) * * *

* * * * *

**Note 4 to paragraph (a):** Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(b) *General license for certain people-to-people travel and related transactions where certain transactions were completed prior to June 5, 2019.* Persons subject to U.S. jurisdiction are authorized to engage in people-to-people travel and related transactions for a trip consistent with paragraph (b) of this section as those provisions existed on April 17, 2019, provided the traveler completed at least one travel-

related transaction (such as purchasing a flight or reserving accommodation) for that particular trip prior to June 5, 2019.

* * * * *

■ 3. Amend § 515.572 by adding Note 1 to paragraph (a)(2) to read as follows:

**§ 515.572 Provision of travel, carrier, other transportation-related, and remittance forwarding services.**

(a) * * *

(2) * * *

**Note 1 to paragraph (a)(2):** The export or reexport to Cuba of items subject to the Export Administration Regulations (15 CFR part 730 *et seq.*), including vessels and aircraft used to provide carrier services, requires separate authorization from the Department of Commerce. See § 515.533.

* * * * *

Dated: May 30, 2019.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2019–11755 Filed 6–4–19; 8:45 am]

**BILLING CODE 4810–AL–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2019–0121]**

**RIN 1625–AA00**

## Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its safety zone regulation for Annual Events in the Captain of the Port Buffalo Zone. This amendment adds eight new permanent safety zones. These amendments and additions are necessary to protect spectators, participants, and vessels from the hazards associated with annual maritime events, including fireworks displays, boat races, and air shows.

**DATES:** This rule is effective July 5, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0121 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

On April 26, 2019, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) titled Safety Zones; Annual Events in the Captain of the Port Buffalo Zone (84 FR 17756). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this amendment to the CFR. During the comment period that ended May 28, 2019, we received no comments.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The purpose of the this rule is to update the safety zones in 33 CFR 165.939 to ensure accuracy of times, dates, and dimensions for various triggering and marine events that are expected to be conducted within the Captain of the Port Buffalo Zone throughout the year. The purpose of the rulemaking is also to ensure vessels and persons are protected from the specific hazards related to the aforementioned events. These specific hazards include obstructions in the waterway that may cause marine casualties; collisions among vessels maneuvering at a high speed within a channel; the explosive dangers involved in pyrotechnics and hazardous cargo; and flaming/falling debris into the water that may cause injuries.

### IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 26, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule adds eight new safety zones to Table 165.939 within § 165.939 for annually recurring events in the Captain of the Port Buffalo Zone. These eight zones were approved and published in the **Federal Register** as temporary safety zones in 2018 and were added in order to protect the public from the safety hazards previously described. A list of specific changes and additions are available in the attachments within this Docket.

The Captain of the Port Buffalo has determined that the safety zones in this rule are necessary to protect the safety of vessels and people during annual marine or triggering events in the Captain of the Port Buffalo zone. Although this rule will be effective year-round, the safety zones in this rule will be enforced only immediately before, during, and after events that pose a hazard to the public and only upon notice by the Captain of the Port Buffalo.

The Captain of the Port Buffalo will notify the public that the zones in this rule are or will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Buffalo or a designated representative. Entry into, transiting, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port or a designated representative. The Captain of the Port or a designated representative may be contacted via VHF Channel 16 or at 716–843–9525.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the characteristics of the safety zones, including size, location, duration, and time-of-day. The safety

zones created by this rule will be relatively small and are designed to minimize their impact on navigable waters. Furthermore, the safety zones have been designed to allow vessels to transit around them. In addition, the safety zones will have built in times to allow vessels to travel through when situations allow. Thus, restrictions on vessel movement within each particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of recurring annual safety zones. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.939, amend Table 165.939 by adding the entries (a)(7) and (8), (b)(30) through (33), and (c)(5) and (6) to read as follows:

**§ 165.939 Safety Zones; Annual Events in the Captain of the Port Buffalo Zone.**

* * * * *

| Event | Location [1] | Enforcement date and time [2] |
|---|---|---|
| **(a) June Safety Zones** | | |
| * * | * * * | * * |
| (7) Blazing Paddles | Cleveland, OH. All waters of the Cuyahoga River in Cleveland OH, beginning at position 41°29′36″ N, 081°42′13″ W to the turnaround point at position 41°27′53″ N,081°40′38″ W. | On or around the 3rd weekend of June. |
| (8) Boaters Against Cancer Fireworks. | Kendall, NY. All waters of Lake Ontario contained within a 210 foot radius of the fireworks launch site located at 43°22′02.04″ N, 078°01′48.06″ W in Kendall, NY. | On or around the last weekend of June. |
| **(b) July Safety Zones** | | |
| * * | * * * | * * |
| (30) Wine and Walleye Festival Fireworks. | Ashtabula, OH. All waters within a 280 foot radius of the fireworks launch site located at position 41°54′06″ N, 080°47′49″ W, Ashtabula, OH. | On or around the last weekend of July. |
| (31) City of Erie 4th of July Fireworks. | Erie, PA. All waters of Lake Erie contained within a 280 foot radius of the fireworks launch site located at 42°08′17.13″ N, 080°05′30.17″ W in Erie, PA. | On or around the 4th of July. |
| (32) Buffalo Italian Fest | Buffalo, NY. All waters of Lake Erie contained within a 420 foot radius of 42°52′04.23″ N, 078°53′00.67″ W in Buffalo, NY. | On or around 2nd or 3rd weekend of July. |
| (33) Hamburg Beach Blast | Hamburg, NY. All waters of Lake Erie contained within a 280 foot radius of 42°45′59.21″ N, 078°52′41.51″ W in Hamburg, NY. | On or around the last weekend of July. |
| **(c) August Safety Zones** | | |
| * * | * * * | * * |
| (5) Ski Show Sylvan Beach | Sylvan Beach, NY. All waters where Fish Creek meets Oneida Lake starting at position 43°11′36.6″ N, 75°43′53.8″ W then South to 43°11′33.7″ N, 75°43′51.2″ W then East to 43°11′42.4″ N, 75°43′38.6″ W then North to 43°11′44.5″ N, 75°43′39.7″ W then returning to the point of origin. | On or around the 2nd or 3rd weekend of August. |
| (6) Great Lakes Offshore Grand Prix. | Dunkirk, NY. All waters of Lake Erie starting at position 42°29′37.7″ N, 079°21′17.7″ W then Northwest to 42°29′45.2″ N, 079°21′28.2″ W then Northeast to 42°30′15.0″ N, 079°21′20.0″ W then Northeast to 42°30′39.0″ N, 079°19′46.0″ W then Southeast to 42°30′09.3″ N, 079°19′03.1″ W. | On or around the 2nd or 3rd weekend of August. |

[1] All coordinates listed in Table 165.929 reference Datum NAD 1983.
[2] As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed safety zones are subject to change, and will be published in a Notice of Enforcement prior to the event.

Dated: May 31, 2019.

**Joseph S. Dufresne,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2019–11754 Filed 6–4–19; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2019–0395]**

## Safety Zone; Milwaukee Harbor, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone on the Milwaukee Harbor in Milwaukee, WI during specified times from June 7, 2019 through August 23, 2019. This action is necessary and intended to protect the safety of life and property on navigable waterways prior to, during, and immediately after fireworks displays. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative. The operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

**DATES:** The regulations in 33 CFR 165.935 will be enforced at the times specified below in **SUPPLEMENTARY INFORMATION** from June 7, 2019 through August 23, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email marine event coordinator MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Milwaukee Harbor Safety Zone listed in 33 CFR 165.935 at the following times, for the following events:

(1) *Pride Fest Fireworks* on June 7, 2019 from 9:30 p.m. through 10:30 p.m.

(2) *Polish Fest Fireworks* on June 15, 2019 from 10:30 p.m. through 11:30 p.m.

(3) *Summerfest Fireworks* on June 26, 2019 from 9:30 p.m. through 10:30 p.m.

(4) *Festa Italiana Fireworks* on July 20 and 21, 2019 from 10:30 p.m. through 11:30 p.m.

(5) *German Fest Fireworks* on July 26 and 27, 2019 from 10:30 p.m. through 11:30 p.m.

(6) *Mexican Fiesta Fireworks* on August 23, 2019 from 9 p.m. through 10 p.m.

This action is being taken to provide for the safety of life on navigable waterways of the Milwaukee Harbor, Milwaukee, WI. This safety zone will encompass the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: Beginning at 43°02′00″ N, 087°53′53″ W; then south to 43°01′44″ N, 087°53′53″ W; then east to 43°01′44″ N, 087°53′25″ W; then north to 43°02′00″ N, 087°53′25″ W; then west to the point of origin. (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.935 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via VHF Channel 16 or at (414) 747–7182.

Dated: May 31, 2019.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2019–11703 Filed 6–4–19; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 225

**RIN 1810–AB56**

## Outdated Regulations—Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants for Credit Enhancement for Charter School Facilities

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Secretary amends the CSP—Grants for Credit Enhancement for Charter School Facilities program regulations to reflect changes made to title IV of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), to incorporate relevant statutory changes for the program and its implementing regulations.

**DATES:** This final rule is effective June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Clifton Jones, 400 Maryland Avenue SW, Room 3E211, Washington, DC 20202. Telephone: (202) 205–2204. Email: *clifton.jones@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On December 10, 2015, the ESSA, which reauthorized the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), was signed into law. Therefore, we are revising, in title 34 of the Code of Federal Regulations (CFR), §§ 225.1(b), 225.4(a), 225.11(a)(7), and 225.12(a)(1) to reflect specific statutory changes. The following paragraphs describe the changes we are making to the regulations and the statutory changes that necessitate them.

### Part 225—Credit Enhancement for Charter School Facilities Program (§ 225.1)

*Statute:* Section 4304 of the ESEA.

*Current Regulations:* Current § 225.1 provides the purpose of the Credit Enhancement for Charter School Facilities program. The regulation was derived from the authorizing statute for the program under the ESEA, as amended by NCLB, that allowed grantees to use the grant funds deposited in the reserve account to assist charter schools to access private sector capital to accomplish either of the following objectives: (1) The acquisition of an interest in improved or unimproved real property that is necessary to commence or continue the operation of a charter school; or (2) the construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

*Final Regulations:* Revised § 225.1 updates the stated purpose of the Credit Enhancement for Charter School Facilities program. The regulation is derived from the authorizing statute for the program under the ESEA, as amended by ESSA, that allows for grantees to use the funds deposited in the reserve account to assist charter schools to access private sector capital to accomplish one or more of the following objectives: (1) The acquisition of an interest in improved or unimproved real property that is necessary to commence or continue the operation of a charter school; (2) the construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school; or (3) the predevelopment costs required to assess sites for purposes of the program and that are necessary to commence or continue the operation of a charter school.

*Reasons:* Section 4304(e) of the ESEA, as amended by ESSA, added an additional program objective for which an eligible entity receiving a grant under this program may use the funds. Therefore, we are adding the new program objective to the regulation.

### Part 225—Credit Enhancement for Charter School Facilities Program (§ 225.4)

*Statute:* Section 4310(2) of the ESEA, as amended by ESSA, defines ''charter school.''

*Current Regulations:* Section 225.4(a) currently defines ''charter school'' under this program as it was defined in section 5210 of the ESEA, as amended by NCLB.

*Final Regulations and Reasons:* The final regulation updates the definition of ''charter school'' under this program, to reference the current definition in section 4310(2) of the ESEA, as amended by the ESSA.

### Part 225—Credit Enhancement for Charter School Facilities Program (§ 225.11)

*Statute:* Section 4303(g)(2) of the ESEA.

*Current Regulations:* The current regulation provides criteria that the Secretary will use to evaluate an application for a Credit Enhancement for Charter School Facilities grant. Section 225.11(a)(7) references States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the ESEA, as amended by NCLB.

*Final Regulations and Reasons:* The final regulation updates § 225.11(a)(7) to reference States with strong charter laws, consistent with the criteria for such laws in section 4303(g)(2) of the ESEA, as amended by ESSA.

### Part 225—Credit Enhancement for Charter School Facilities Program (§ 225.12)

*Statute:* Section 4304 of the ESEA.

*Current Regulations:* The current regulation provides that the Secretary

may award up to 15 additional points under a competitive preference priority related to the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on three factors. The three factors are: (1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the ESEA, as amended by NCLB; (2) the extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and (3) the extent to which the applicant would target services to communities with large proportions of students from low-income families.

*Final Regulations:* The final regulation updates the first factor in the list above to refer to the extent to which the applicant would target services in geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA, as amended by the ESSA.

*Reasons:* With the passage of the ESEA, as amended by ESSA, the categories of schools that States must identify under section 1111 have changed, and thus, the categories of schools in § 225.12 that are based on these provisions must be updated. Under the ESEA, as amended by NCLB, the Department could award additional points to applicants that target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring. However, under the ESEA, as amended by ESSA, States must now identify schools for comprehensive support and improvement and targeted support and improvement.

**Executive Orders 12866, 13563, and 13771**

*Waiver of Rulemaking and Delayed Effective Date:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA because this regulatory action revises regulations to conform with statutory changes. This regulatory action does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on this regulatory action is unnecessary.

Rulemaking is ''unnecessary'' when ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting* U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983).

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously stated, because the final regulations merely reflect existing statutory changes, there is good cause to waive the delayed effective dates in the APA and make the final regulations effective upon publication.

**Regulatory Impact Analysis**

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those

approaches that maximize net benefits. The Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action is not significant and would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The final regulations are not expected to have a significant impact.

**Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

**Paperwork Reduction Act of 1995**

The final regulations do not create any new information collection requirements.

**Intergovernmental Review**

The CSP—Grants for Credit Enhancement for Charter School Facilities are subject to Executive Order 12372 and the regulations in 34 CFR part 79.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

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(Catalog of Federal Domestic Assistance Number: 84.354A CSP—Grants for Credit Enhancement for Charter School Facilities.)

**List of Subjects in 34 CFR Part 225**

Education, Educational facilities, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Schools.

Dated: May 30, 2019.

**Betsy DeVos,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends part 225 of title 34 of the Code of Federal Regulations as follows:

## PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

■ 1. The authority citation for part 225 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3, 1232, and 7221c.

**§§ 225.1 through 225.21 [Amended]**

■ 2. Sections 225.1 through 225.21 are amended by removing the authority citations at the end of each section.

■ 3. Section 225.1 is further amended by adding paragraph (b)(3) to read as follows:

**§ 225.1 What is the Credit Enhancement for Charter School Facilities Program?**

* * * * *

(b) * * *

(3) Assist charter schools with the predevelopment costs required to assess sites for the purpose of acquiring (by purchase, lease, donation, or otherwise) an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property or constructing new facilities, or renovating, repairing, or altering existing facilities, and that are necessary to commence or continue the operation of a charter school.

* * * * *

**§ 225.4 [Amended]**

■ 4. Section 225.4 is further amended by removing the words ''5210 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001'' from paragraph (a) introductory text and adding in their place the words ''4310(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act''.

**§ 225.11 [Amended]**

■ 5. Section 225.11 is further amended by removing the words ''5202(e)(3) of the Elementary and Secondary Education Act of 1965'' from paragraph (a)(7) and adding in their place the words ''4303(g)(2) of the Elementary and Secondary Education Act of 1965''.

■ 6. Section 225.12 is further amended by revising paragraph (a)(1) to read as follows:

**§ 225.12 What funding priority may the Secretary use in making a grant award?**

(a) * * *

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA, as amended by the Every Student Succeeds Act;

* * * * *

[FR Doc. 2019–11727 Filed 6–4–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 17

**RIN 2900–AQ47**

## Urgent Care

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) adopts as final a proposed rule amending its regulations that govern VA health care. This final rule grants eligible veterans access to urgent care from qualifying non-VA entities or providers without prior approval from VA. This rulemaking implements the mandates of the VA MISSION Act of 2018 and increases veterans' ability to choose health care in the community.

**DATES:** This final rule is effective June 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joseph Duran, Director of Policy and Planning. 3773 Cherry Creek North Drive, Denver CO 80209. *Joseph.Duran2@va.gov.* (303) 370–1637. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on January 31, 2019, VA published a proposed rule, which proposed to amend its regulations that govern VA health care. 84 FR 627. VA provided a 30-day comment period, which ended on March 4, 2019. We received 3,285 comments on the proposed rule.

On June 6, 2018, section 105 of Public Law 115–182, the John S. McCain III,

Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) by adding a new section 1725A, Access to walk-in care. The new section 1725A was further amended through the Department of Veterans Affairs Expiring Authorities Act of 2018 (Pub. L. 115–251). This benefit is intended to offer eligible veterans convenient care for certain, limited, non-emergent health care needs. Section 1725A(a) and (g) direct the Secretary to establish procedures and regulations to ensure eligible veterans are able to access such care from qualifying non-VA entities or providers to ensure their access to care when minor injury or illness arise. VA is required to develop procedures to ensure eligible veterans can access this care from qualifying non-VA entities or providers. Eligible veterans would include any enrolled veteran who has received care under chapter 17 of title 38 U.S.C. within the 24-month period preceding the furnishing of care under this section. Care under chapter 17 of title 38, U.S.C. would include any of the following: Care provided in a VA facility, care authorized by VA performed by a community provider, emergency room care authorized by VA performed by a community provider, care furnished by a State Veterans home, or urgent care under this proposed section. Qualifying non-VA entities or providers would include any non-VA entity or provider that has entered into a contract, agreement, or other arrangement with VA to provide services under this section.

VA refers to this benefit as urgent care, instead of walk-in care. This benefit will include care provided at both urgent care facilities and walk-in retail health clinics.

This rule implements the mandates of section 1725A, as added by the VA MISSION Act of 2018 as amended, by establishing a new § 17.4600. Multiple commenters generally supported the proposed rule, but had several suggestions and concerns on various aspects of the rule, while others strongly opposed the proposed rule. We have grouped similar comments into the various sections below for ease of readability.

**Positive Comments**

VA received numerous comments in favor of the rule. One commenter stated that the rule would provide veterans vital services as well as provide longer hours of operation in convenient locations. Another commenter said urgent care would bring a better sense of care to veterans in need. A commenter also stated that the proposed rule would provide access to quality accessible community care to serve the veteran community. Several commenters stated that the proposed rule would provide at lower cost many services that veterans might otherwise seek from an emergency room. Several commenters indicated that the proposed rule would save veterans time in that they would not have to travel long distances to their nearest VA medical facility to receive health care. Another commenter indicated that urgent care would free up VA medical facility resources so that VA can focus on treating service-connected conditions and managing long term care. Several commenters stated that urgent care will ensure that veterans receive timely and appropriate, immediately necessary care in a short period of time, which will save lives. Another commenter stated that the proposed rule is an important step in ensuring that veterans will receive appropriate care regardless of whether the best treatment is in VA or the private sector. Another commenter stated that the rule would alleviate the burden of disabled or elderly veterans who might face obstacles in reaching VA medical facilities. This commenter also stated that the rule would help restore trust in the VA health care system. Another commenter similarly stated that the proposed rule would benefit veterans who live in rural areas, the homeless, and those veterans who lack transportation. Several commenters supported VA's decision to call the new benefit urgent care, which is consistent with industry practice. Another commenter supported the proposed rule stating that the rule should expand community care options for veterans. Several commenters agreed that urgent care should not replace primary and specialty care coordinated through VA. One commenter also stated that urgent care would allow for better delivery of timely access for serious or life-threatening emergency situations in VA medical facilitates. A commenter supported the proposed rule stating that it will widen the stream of health care and allow more veterans to get the care they need. Another commenter supported the proposed rule stating that urgent care should only be for the treatment of a single condition and that follow-up care should be managed by the VA medical facility. The commenter also agreed with the publishing of a list of the non-VA providers and entities who will provide urgent care, as well as the establishment of the $30 copayment. One commenter stated that urgent care has the potential for high value for veterans. We thank the commenters and make no changes based on these comments.

**Comments on Copayments**

We stated in the proposed rule that VA would establish a regular copayment for urgent care of $30. An eligible veteran's liability for the $30 regular copayment would depend on the veteran's enrollment category and the number of visits in a calendar year. Veterans enrolled in priority groups 1 through 6 (except those veterans described in § 17.36(d)(3)(iii) for all matters not covered by priority category 6), would be required to pay the $30 copayment after their third visit in the calendar year. All other veterans would be required to pay the $30 copayment on every visit, subject to certain exceptions explained further in the proposed rule. Most of the comments received on the proposed rule were in opposition to VA charging a copayment for urgent care for veterans enrolled in priority groups 1 through 6, service-connected veterans, or other specific subsets of veterans. The commenters' concerns are summarized as follows.

Many commenters stated charging a copayment for service-connected veterans is unreasonable and unacceptable. Some commenters had more specific concerns and suggestions about the category of veterans who should be charged copayments. For instance, some comments stated that copayments should only be charged for non-service-connected conditions, veterans who were 100 percent service-connected should not be charged a copayment, veterans who are enrolled in priority group 1 should not be charged copayments, and that veterans with a disability rating over 30 percent should not pay a copayment. Another commenter stated that subjecting American Indian and Alaska Native veterans to a copayment as a condition of health care violates the Federal trust responsibility.

VA acknowledges that veterans enrolled under priority groups 1 through 6 generally are not required to pay copayments under other health care programs administered under title 38; however, section 1725A(f)(1)(B) states that an eligible veteran not required to pay a copayment under the title may access walk-in care without a copayment for the first two visits in a calendar year. For any additional visits, a copayment at an amount determined by the Secretary may be required. VA has decided to utilize this authority to require copayments for these veterans,

including for the categories of veterans that the commenters specifically noted, because the copayment is designed to encourage appropriate use of the benefit. Collecting a copayment after the third visit will help ensure that the urgent care benefit is utilized appropriately and is not being used as a substitute for primary care. As explained in the proposed rule, copayments are a common feature of health care, including VA health care, and are an important mechanism for guiding behavior to ensure that patients receive care at an appropriate location. The copayment is designed to encourage veterans to seek care from VA first, when VA can provide the needed care, and to utilize urgent care when prompt treatment is necessary to prevent the condition from becoming emergent. Urgent care is considered to be a convenient option for care, but is not intended to be used as a substitute for traditional primary care that emphasizes longitudinal management and care coordination. Also, collecting copayments allows VA to utilize its health care resources more efficiently. Generally speaking, copayments are applicable to all similarly situated veterans and VA care is provided to eligible veterans in connection with military service. However, VA is not authorized to waive copayments for specific categories of veterans, such as American Indian or Alaskan Native veterans, as suggested by one commenter.

In addition, VA has decided to utilize this authority to require copayments for these veterans, including for the categories of veterans that the commenters specifically noted, because the copayment is designed to discourage excessive use or misuse of the benefit. VA anticipates that veterans, on average, will use this benefit fewer than three times per year. VA used Medicare sampling data, which is frequently used by health researchers and others, to estimate that 85 percent of visits are an enrollees' first or second visit. We have confidence that these data should be accurate given the similarity of the benefit (open access), the availability of multiple network providers, and the comparable morbidities between the Medicare population and the veteran population. While the Medicare data does not have the same copayment as VA's proposed rate (it assumed a higher copayment), we have adjusted for this by assuming higher utilization given the lower cost. Therefore, VA believes that the majority of service-connected veterans will not pay a copayment, as their first three visits in the calendar year are exempt from the copayment requirement.

Many commenters were concerned that the copayment could cause a financial burden on veterans and some were further concerned that the copayment may act as a deterrent for using the urgent care benefit. In particular, one commenter suggested that there should be no copayment to encourage veterans to use the urgent care benefit instead of emergency room, which is free. Another commenter stated that veterans in priority groups 1 through 6 who are 10 percent service-connected are not required to pay a copayment, and will not be expecting a bill. In addition, the commenter stated that beneficiaries have been warned through the military health system and Medicare about providers going after patients for money they do not owe (so called balance billing schemes). The commenter added that as such, eligible veterans may have been conditioned to ignore bills they receive, which could lead to unpaid medical bills and collection actions against veterans.

VA does not believe the rule as proposed will create a copayment burden for most veterans. VA has a waiver process for copayments in place for existing copayments when these liabilities would produce a financial hardship for veterans, and this process will apply to copayments assessed under this benefit. In fiscal year (FY) 2018, VA granted approximately two-thirds of waiver requests from veterans, but only received fewer than 25,000 such requests. We interpret these data to mean that those veterans who face an actual hardship are granted relief, while the copayment liabilities are not an obstacle for most veterans. VA believes the $30 copayment after three visits is a reasonable mechanism to help ensure that veterans are going to use urgent care appropriately. VA worked with the support of contractors to analyze different copayment structures in the context of the urgent care benefit and the impact of these copayments on utilization. Copayments are common for urgent care visits both in the private and public sectors. The analysis showed that copayments are an appropriate method to influence utilization. Also, VA has developed educational materials that will alert the public of the availability of the new urgent care benefit, the eligibility criteria, as well as the copayment obligation. VA expects that these educational materials will assist veterans in taking full advantage of the urgent care benefit while listing upfront charges for the copayment structure. We are not making any changes based on these comments.

To ensure that neither the veteran nor their insurer is billed by the provider when VA is responsible for the payment of urgent care, we are adding a new paragraph (f). This new paragraph states that payments made for urgent care constitute payment in full and extinguish the liability of the veteran. It also states the qualifying non-VA entity or provider may not impose any additional charge on a veteran or his or her health care insurer for any urgent care service for which payment is made by VA. Finally, it states that this section does not abrogate VA's right under section 1729 to recover or collect from a third party the reasonable charges of the care or services provided under this section. These provisions are consistent with current practice under other authorities for community care and should address the commenters' concerns. We are also adding a new paragraph (c)(1)(B) that states that the eligible veteran must declare at the time of the episode of care that the veteran is using the VA benefit under this section. We believe this requirement will also help reduce the potential for inadvertent billing, as the qualifying non-VA entities or providers will know in advance that this care is being furnished under the VA benefit. A collateral benefit of this change is that it should also help reduce the potential that services that are outside the scope of VA's benefit will be furnished to eligible veterans. We further make a clarifying edit to the language in paragraph (c)(1) to refer more broadly to urgent care under this section.

Some commenters suggested that a copayment be charged for veterans in priority groups 1 through 6 after a different number of visits (other than after the third visit). For instance, one commenter stated that copayments should not be imposed until after the sixth visit while another suggested that the copayment should not be imposed until after the tenth visit. As previously explained, VA determined it would be appropriate to require a copayment after the third visit for priority groups 1 through 6. VA is not limiting the total number of visits a veteran may make in a year, as VA is striving to ensure veterans will have access to convenient care when necessary. However, this urgent care benefit is not meant to supplant primary and specialty care provided by VA. VA is limiting the types of services provided to ensure that preventive care is not provided through this benefit and the veteran's primary care is managed through the veteran's primary care provider. A copayment after the third visit will encourage

veterans enrolled in these priority groups to seek only episodic urgent care from the community and direct other care to the local VA facility. VA is working to increase internal capacity at medical facilities while ensuring veterans have access to community facilities to address urgent care needs.

Many commenters suggested alternative copayment structures. For instance, one commenter suggested that veterans enrolled in priority group 1 pay no copayment; priority groups 2 through 6 pay $30 after two visits; and priority groups 7 and 8 pay $40 after one visit. Another commenter stated that the copayment should not be more than $12. A commenter indicated that VA should adopt the $8 copayment that is charged for Medicare, instead of the proposed $30. Several commenters stated that the copayment for urgent care should be $5 to $10. A commenter recommended that VA apply a standard copayment rate for all beneficiaries and be consistent as to which services require a copayment. When modeling the proposed rule, VA looked at various copayment structures between $0 and $75, the effect of requiring copayments after a different number of visits, and considered instituting different copayments for the various priority groups. We believe that these various models reflect the general proposals that we received suggesting that VA adopt different copayment structures. We determined that the model proposed and adopted here as final is appropriate given our goals of ensuring access, reducing over-reliance, ensuring the right level of care, and being fiscally responsible. In addition, the $30 copayment is still less than the industry average, which is $67 based on the market average as determined by analysis conducted by VA that was published in conjunction with the proposed rule. We are not making any changes based on these comments.

Multiple commenters also suggested that the copayment structure mirror the copayment structure VA uses for care provided at VA facilities. A commenter stated that the proposed rule as drafted raises the standard copayment from $15 to $30 for all urgent care visits without adequate justification. The commenter indicated that currently, veterans seeking same-day services for urgent non-service connected care are required to pay a copayment amount equivalent to a primary care visit, which is $15, not $30. The commenter also noted that the proposed rule's cost-benefit analysis failed to provide data comparing the existing $15 copayment to the proposed $30 copayment to justify the increase. The comment further explained that our MISSION Act Copayment Study Assessment Analysis (assessment) concluded this would be the least disruptive option, while new copayment levels would result in ''significant disruption from a people, process, and technology perspective''. The commenter added that the disparity in copayments between VA facilities and qualifying non-VA entities will punish veterans for using health facilities outside of VA for urgent care and that raising the copayment rates for urgent care will financially punish veterans for seeking routine health care.

As previously explained, section 1725A(f) allows VA to establish a copayment for each episode of care furnished under this section. In preparation for the implementation of the VA MISSION Act of 2018, VA reviewed industry copayment structures for urgent care. The assessment reviewed commercial best practices and cost sharing structures and the applicability of those structures to VA. The assessment defined several scenarios and provided analytics based on utilization data and behavior change assumptions to develop costs and benefits for each possibility to make a recommendation on how VA could structure a copayment for urgent/walk-in care. VA acknowledges that this assessment recommended a $15 copayment for the urgent care benefit and the assessment did not provide data comparing the existing $15 copayment to the proposed $30 copayment to justify the increase; however, the assessment did not look at the clinical consideration to make certain that the veterans receive the right level of care, better care coordination, and patient outcomes. In this regard, the higher copayment VA proposed would encourage veterans to seek care with their primary care providers at a lower copayment. In addition, although VA's assessment did not include data using a $30 copayment, it did analyze various different dollar amounts. In our assessment of copayments, we found that copayments ranged from $15 to $100, and the majority of copayments in commercial, health maintenance organization (HMO), preferred provider organization (PPO), and government plans fell between $40 and $70. Moreover, we considered both a $15 copayment and an escalating copayment, both with a requirement for preauthorization beyond the second visit. However, we believe that a $30 copayment for each visit without a preauthorization requirement is consistent with the need to ensure that veterans receive the right level of care, better care coordination, and improved patient outcomes. This copayment is below what other commercial and government plans charge and is in line with the copayment structure used by TRICARE Prime for retirees. Regarding the technological concern stated by the commenter, VA is addressing this concern through system changes to facilitate the charging of the different copayments for urgent care. Once the system changes are in place, this will allow for automation, thereby streamlining our process and ensuring that employee workload is no greater than what it is for charging copayments for other community care claims today. We are not making any changes based on these comments.

A commenter stated that there is an exception to the copayment rule for veterans described in 38 CFR 17.36(d)(3)(iii) and questioned how the exception applies to veterans in priority group 4 based on catastrophic disability. We initially note that the exception in § 17.36(d)(3)(iii) does not affect veterans enrolled in priority group 4. Veterans who are enrolled in priority group 4 will not have a copayment for the first three urgent visits in each calendar year at an eligible facility, but they will be required to pay a $30 copayment starting on the fourth visit of such calendar year. This copayment requirement includes veterans who are determined to be catastrophically disabled by VA under priority group 4. There is no limit on the number of urgent care visits for an eligible veteran. The $30 copayment discourages over utilization of the benefit, while still making on-demand care accessible and without prior authorization.

A commenter stated that they do not agree with the $30 copayment after a few urgent care visits because it will create an added burden on VA staff to manage. Although VA acknowledges that administrative actions will be required to collect the copayment, VA believes that the burden will not be unreasonable, and VA has implementation plans in place to address the administrative aspects of implementing the rule. We are not making any edits changes on this comment.

A commenter agreed with the $30 copayment but suggested that VA periodically adjust the copayment to account for market changes in the cost of delivering health care. VA has the authority to adjust the $30 copayment for urgent care visits through subsequent rulemaking and may choose to do so in the future. We are not making any changes based on this comment.

A commenter stated that the copayment for urgent care does not seem to control usage because a non-service connected veteran would pay $30 for urgent care, which is less than the copayment for a specialty visit. VA acknowledges that a copayment for specialty care is $50. Urgent care may be used for services that VA considers specialty care, for example x-rays, however, these services must be provided in a single visit. We believe that it is unlikely that veterans will be this selective in terms of only seeking specialty care services through qualifying non-VA entities or providers. Moreover, VA believes that most types of specialty care are longitudinal care, which is not covered under the section 1725A. We defined l*ongitudinal management of conditions in the proposed rule to mean* outpatient care that addresses important disease prevention and treatment goals and is dependent upon bidirectional communications that are ongoing over an extended period of time. For purposes of this section, the term ''longitudinal management of conditions'' and ''longitudinal care'' are synonymous.

Another commenter requested clarification that non-VA urgent care entities will not be responsible for collection of veteran copayments. We stated in the proposed rule that eligible veterans would not owe copayments at the time of service, consistent with current practice for VA and VA-authorized community care. VA finds that this language is sufficiently clear in that VA does not intend for members of the non-VA urgent care network to collect or bill veterans for copayments resulting from urgent care visits.

A commenter stated that VA should waive copayments for urgent care visits during which a flu shot is the only service provided. The proposed rule, in § 17.4600(d)(2), already provided that an urgent care visit consisting solely of an immunization against influenza (flu shot), as well as a visit consisting solely of a service VA has identified under § 17.4600(b)(5)(iii) (VA's authority to provide additional services not typically covered by this benefit, now (b)(5)(iv)) is not subject to the $30 copayment amount.

Several commenters were under the impression that the proposed rule would establish a new copayment for urgent care provided in a VA medical facility and opposed such change. The urgent care benefit under 38 U.S.C. 1725A will not be provided at VA medical facilities. This benefit will be provided by qualifying non-VA entities or providers. The copayment requirements for similar care provided at VA medical facilities will not be amended by this rule. We are not making any changes based on these comments.

Several commenters indicated that instead of charging a copayment for urgent care, VA should stop collecting severance pay from their service-connected disability compensation. Section 3.700(a)(3) of 38 CFR states that where the disability or disabilities found to be service-connected are the same as those upon which disability severance pay is granted, or where entitlement to disability compensation was established on or after September 15, 1981, an award of compensation generally will be made subject to recoupment of the disability severance pay. The proposed rule only addressed urgent care authorized under section 1725A. The recoupment of disability severance pay is beyond the scope of the proposed rule. We are not making any changes based on these comments.

Several commenters stated that undocumented immigrants are afforded free health care and veterans who have served their countries are charged copayments. The proposed rule addressed urgent care authorized by 38 U.S.C. 1725A. Health care for undocumented immigrants is beyond the scope of the proposed rule. We are not making any edits based on these comments.

One commenter was concerned that the rule would destroy the priority care afforded to service-connected disabled veterans. The commenter added that when service-connected veterans are stripped of their priority status for care and placed on the same level as veterans with no service connected disability then you have created the problem of access to services. The new urgent care benefit does not change any priority status for veterans. Furthermore, we contemplate that the availability of urgent care in the community will be sufficient to provide ready access to veterans qualifying for that service. We are not making any changes based on this comment.

We are making further revisions to our amendments to § 17.108. In our proposed rule, we proposed amending paragraph (e) of that section to apply the exceptions identified in that paragraph to copayments for the urgent care benefit. Upon closer review, we have determined that applying all of the copayment exceptions under § 17.108(e) to urgent care copayments would create inequities that VA did not intend. For example, § 17.108(e)(1) provides that care for a veteran for a non-compensable zero percent service-connected disability is not subject to an outpatient copayment. Applying this exception to the urgent care benefit would create an illogical result where treatment for zero percent service connected disabilities were not subject to a copayment, but treatment for 100 percent service connected disabilities (after a third visit by that veteran) were subject to a copayment. Similarly, subparagraphs (2), (4), and (10) apply to other care that, while not service connected, is generally treated as the equivalent of service connected, and thus would generate the same inequities. We are also omitting the exception under § 17.108(e)(14) from applying to the urgent care copayments, as this provision exempts laboratory services, flat film radiology services, and electrocardiograms from copayments. Exempting these services from copayment liabilities in the context of the urgent care benefit could create an incentive for veterans to receive these services through this benefit, but these procedures are typically necessary for the longitudinal management of conditions, and are always needed for purposes of care coordination. As we explained in the proposed rule and do so again here in further detail below, we believe that care coordination by a primary care provider is essential to overall health, and thus we seek to reduce the potential for fragmentation and duplication of care that could occur through multiple providers ordering lab services or radiology services. As a result, we are amending section 17.108(e) to state that the exceptions in subparagraphs (1), (2), (4), (10), and (14) do not apply as exceptions to the copayment obligation under the urgent care benefit in § 17.4600.

**Comments on Scope of Available Services**

Several commenters had questions regarding the scope of services that would be provided under the urgent care benefit. These commenters indicated that there should be clear guidance for what VA would consider episodic care and questioned what the dispute process would be if care was provided that was not considered episodic. A commenter specifically questioned what would happen if a veteran went to an urgent care clinic for care that is not considered episodic.

The urgent care benefit under 38 U.S.C. 1725A(h) is limited to eligible veterans seeking immediate, non-emergent care from a qualifying non-VA entity or provider that furnishes episodic care and not longitudinal management of conditions. VA further proposed defining the term episodic

care in § 17.4600(b)(2) as applying to a particular health condition, or a limited set of particular health conditions, without an ongoing relationship being established between the eligible veteran and the qualifying non-VA entity or provider. VA will provide educational materials to the public that will state that VA will not pay for preventive care, such as annual examinations and routine screenings, and will post such materials on VA's website at *www.va.gov.* VA will not provide an exhaustive list to account for the needed flexibility in administering the benefit. VA will monitor utilization of this benefit and may make further revisions to the website in the future. Any services provided that are outside of the scope of this benefit are the financial liability of the veteran. These educational materials will be provided to comply with section 121 of the VA MISSION Act of 2018. VA will educate the third-party administrators (TPA), as discussed below, on the urgent care benefit, as required by section 122 of the VA MISSION Act of 2018.

The veteran will be responsible for any urgent care medical claims that do not meet the criteria set forth in this rulemaking. Specifically, a veteran could be liable if: The veteran is not an eligible veteran (*i.e.,* the veteran is either not enrolled or has not received care under chapter 17 of title 38 within the prior 24 months); the provider is not a qualifying non-VA entity or provider (meaning it does not meet the requirements in § 17.4600(b)(4), such as having a contract, agreement, or other arrangement with VA to furnish care and services under this section); or if the care or services do not meet the definition of urgent care in § 17.4600(b)(5) (*i.e.,* the care is not care available from an entity or provider submitting claims for payment as a walk-in retail health clinic or an urgent care facility; or the care is preventive care, is dental care, or is managing a chronic disease). To reduce the potential of veterans' facing unexpected copayments, VA will be available by phone, in person, and by other means to advise veterans who are unsure of their eligibility for this benefit. VA also will make a list of qualifying non-VA entities or providers available on VA's website (*www.va.gov)* so that veterans know where to go and which providers can furnish this care. VA will provide information regarding the services that are generally available through this benefit on a website and will work with its contractors to educate them on the scope of services VA covers. Veterans will also have the option to contact either a VA call center or the non-VA entity or provider to discuss urgent care benefit information including eligibility, covered services, and the nearest qualifying facility and location. Although VA does not anticipate that the urgent care providers will provide care outside of the scope of the urgent care benefit, if this does occur, the veteran would be charged for the cost of care, but both the provider and the veteran would have the ability to appeal this determination. We are not making any changes based on this comment.

Several commenters had concerns regarding follow-up care. A commenter strongly disagreed with VA's proposal that episodic care is addressed in a single visit. The commenter wants the urgent care/walk-in care benefit to be expanded to allow for follow-up care as a clinical best practice. Another commenter stated that the definition in the proposed rule fails to recognize the role of urgent care facilities in the health care delivery system and continuity of care and could create a barrier to necessary follow-up care subsequent to an urgent care encounter for illness or injury. We appreciate the commenters' perspective regarding whether or not episodic care can be furnished in a single visit; however, VA maintains that in order to ensure that care provided is not longitudinal, episodic care is care that can be furnished in a single visit. For this reason, we are amending § 17.4600(b)(2) to amend the definition of episodic care to specifically state that the care must be provided in a single visit.

Another commenter asked who will determine cases where a veteran argues that an episode of care requires several follow-up visits to ensure continuity and full treatment of an acute condition. The commenter further asked whether each visit will count against the three visits that are not subject to a copayment or if the provision regarding three visits without a copayment apply to three visits for unrelated episodes of care. Under our regulations, each visit either counts as one of the three free visits or is subject to a copayment, depending upon the eligible veteran's priority group, the number of visits, and whether the visit is exclusively for a flu shot (or a similar treatment under § 17.4600(b)(5)(iv). Based upon this and other comments, we are amending § 17.4600(b)(5)(iii) to clarify that veterans requiring follow-up care as a result of an urgent care visit under this section must contact VA or their VA-authorized primary care provider to arrange such care. At the time that the veteran contacts VA for follow-up care, VA will schedule the necessary follow-up care at a VA medical facility or by referral through a community provider. If a veteran instead chose to subsequently go to a qualifying non-VA entity or provider for a follow-up visit, this visit would either count as another visit or could be determined to be not covered if it constituted the longitudinal management of a condition if the encounter was not episodic. VA staff will make the determination of whether care is episodic or not, and an appeals process will be available for providers and patients as described above. VA also makes a minor clarifying edit to the language in this provision to change the conjunction.

Multiple commenters had concerns with follow-up care and one commenter indicated that the standard should be that urgent care providers are allowed to provide the same level and scope of care in that urgent care visit for the complete course of treatment that a VA operated urgent care provider would provide as part of the course of treatment in that urgent care visit. The commenter added that to require the course of treatment by the urgent care provider to be arbitrarily and prematurely terminated simply to protect some standard of separation for ''longitudinal care'' is not justified. The treatment that would be provided at a non-VA urgent care facility should be the same as that treatment received in a VA urgent care facility. VA believes that limiting urgent care to a single visit is appropriate because it is important that a veteran's care be provided by a primary care provider to eliminate duplicate treatment and improve health outcomes. Moreover, the separation of longitudinal care as being outside the scope of this benefit is statutorily prescribed in section 1725A(h).

A commenter questioned if a clinical determination was made before or after the fact and based on whose judgement. The commenter also questioned how the best medical interest provision would apply in cases where the veteran believes that care was urgent and not preventative. VA notes that the best medical interest provision in the MISSION Act is a specific eligibility criterion for care that is authorized under the Veterans Community Care Program under section 1703 of title 38, as modified by section 101 and as addressed in VA's separate rulemaking, RIN 2900–AQ46 (Veterans Community Care Program), which is published elsewhere in this issue of the **Federal Register**. As previously stated, this urgent care benefit provides certain veterans access to urgent and walk-in care from qualifying non-VA entities or providers without prior approval by VA.

The urgent care benefit will provide the treatment of conditions that are episodic in nature. Eligible veterans have a dedicated primary care provider and this benefit is intended only to supplement, not supplant, such providers. These dedicated primary care providers coordinate care and reduce the duplication of care to improve patient outcomes. In these cases, if follow up care is required after an urgent care visit, the veteran will need to coordinate such care with VA, as explained above. Further, and as also discussed above, determinations regarding whether services are covered within the benefit will be made by VA staff, and veterans or providers who disagree may appeal this determination.

A commenter recommends that VA publish a list of conditions and symptoms for which veterans can seek urgent care. They state that most individuals are not familiar with the names of services that are used to diagnose and treat the symptoms they may be experiencing, and they believe a list would reassure veterans their urgent care visit would be covered. While VA understands the commenter's concern, VA is not going to list symptoms because we would not want to inadvertently divert care from the appropriate level of care. For instance, pain is a symptom, and could be indicative of a minor illness that would be appropriately treated at an urgent care facility but could also be indicative of a life-threatening condition necessitating emergency treatment. VA will provide examples of care and services that are excluded from the benefit and will make that available to the public at *www.va.gov*. VA will consult with clinical staff, including women's health care providers, in developing the services available at the urgent care and walk-in care facilities.

The same commenter stated that VA should cover emergency contraception for women veterans who request it during an urgent care visit. Urgent care facilities generally do not administer the medication suggested by the commenter during a visit. VA encourages women veterans to use their women's health care provider as their primary care provider, who may provide these services. However, women veterans may access certain services through this benefit that might otherwise be provided by a women's health care provider, such as treatment for urinary tract infections or vaginitis.

This commenter also recommended flu shots and therapeutic vaccines in the urgent care benefit to be available for all veterans, including pregnant women. In addition, the commenter recommended that VA waive copayments for urgent care visits during which a flu shot is the only service provided. VA agrees with the commenter. The new urgent care benefit will include immunizations against influenza (flu shots), which will be available to all veterans as clinically appropriate, including pregnant women. The proposed rulemaking provides an urgent care visit consisting solely of an immunization against influenza (flu shot) is not subject to the $30 copayment amount. VA, in response to other comments, is amending proposed § 17.4600(d)(2) to exempt visits that consist solely of flu shots from the number of visits an eligible veteran may receive before being charged a copayment.

A commenter stated that their urgent care representative stated that veterans must have a pre-authorization to receive urgent care, and that their local VA medical facility indicated that urgent care is not covered for veterans. The commenter stated that women veterans are not receiving equal access to health care and added that VA should help all veterans have equal access to health care. We wish to clarify two points in light of this comment. First, eligible veterans will not be required to request VA authorization prior to receiving urgent care from a qualifying non-VA entity or provider under this benefit. As stated previously, VA will consult with health care providers, including women's health care providers, regarding this benefit to ensure equal access to health care. Second, the new urgent care benefit authorized under 38 U.S.C. 1725A has not been effective prior to this rulemaking, and thus the statement by the local VA medical facility was accurate at the time it was made, as all VA community care (except for emergency care provided under 38 U.S.C. 1725 or 1728) has required VA authorization prior to veterans seeing community providers. We are not making any changes based on this comment.

Another commenter had questions about prior authorization required for the urgent care visit as well as any necessary follow-up care. Urgent care benefits under section 1725A do not require authorization from VA. However, follow-up care must be coordinated by VA, and it is the veteran's responsibility to coordinate follow-up care and must contact VA or their VA-authorized primary care provider to arrange such care.

Another commenter stated that urgent care centers have a role in preventive care, ranging from influenza vaccines to diabetes and hepatitis screenings. The commenter further stated that irrational barriers being proposed in this rule disallowing urgent care centers from providing follow-up care after an acute care visit or preventive care should be removed so urgent care facilities are not restricted from improving the health of our nation's veterans. The commenter also stated that urgent care facilities serve an essential role as part of the primary care safety net across the country. We understand the commenters point, but note that eligible veterans are not like other potential users of urgent care centers or walk-in retail health clinics, as they, by definition, are enrolled in VA health care and are receiving care and services from VA. As such, the ability of urgent care centers to serve as a primary care safety net and to provide preventive care for eligible veterans is less important because they already have means of accessing these services. Cost-free preventive care is already available to all eligible enrolled veterans at VA clinics and hospitals, usually on a walk-in or same-day basis; there is no need for a veteran to seek such care at a retail walk-in clinic or urgent care center. Veterans requiring services that are not available within walk-in retail health clinics or urgent care centers will need to contact VA, or in the case of a medical emergency, seek care at the nearest emergency room. We are, however, making one edit based on these comments. We are revising § 17.4600(b)(5)(ii)(B) to authorize specifically screenings related to the treatment of symptoms associated with an immediate illness or exposure. We believe this addresses some of the commenter's concerns and should provide additional flexibility so that patients who present for care with symptoms may receive diagnostic screenings for purposes of identifying the specific clinical need and treating it appropriately.

Several commenters encouraged VA to include preventive services generally, or at least certain preventive services (such as physical therapy services), and to cover a broader range of immunizations than influenza, not just on an as-needed or as-appropriate basis. Section 1725A(h) does not provide for urgent care to be used for the longitudinal management of health care, such as physical therapy. Preventive health services are excluded because such services are best coordinated and managed by a primary health care provider who addresses important disease prevention and treatment goals through bidirectional communication. We are clarifying that urgent care in § 17.4600(b)(5)(ii)(A) does not include

preventive care or chronic disease management. Also, physical therapy services are considered ''rehabilitative services'', which are not included in the definition of preventive services in 38 U.S.C. 1701(9).

Continuous care generally reduces the risk of adverse reactions, and that is one of VA's primary goals, but we have made an exception here for flu shots and therapeutic vaccines because there is so little risk in these areas and because they are necessary as part of treatment of certain conditions. VA considers other types of preventive care vaccines to be part of the veteran's longitudinal care, and as such, these other vaccines should be provided by the veteran's primary care provider and not as part of urgent care. Other vaccines may produce unique risks of adverse reaction or duplication that could potentially harm the patient. Managing these vaccines through a primary health care provider reduces these risks. In response to the example provided by the commenter, physical therapy, if not properly coordinated and performed, can lead to worse health outcomes.

One commenter stated that in the proposed rule, VA acknowledged that there may be other preventive treatments with minimal risk of adverse action; however, VA considered these preventive care treatments to be part of the veteran's longitudinal care, and accordingly these other treatments should be provided by the veteran's primary care provider and not as part of urgent care. The commenter questioned whether these other services would not be paid by VA and added if there would be some discussion as to paying for some services as outpatient care because urgent/walk-in care providers do not provide inpatient care or extended care services and would this result in an argument over payment. Urgent care is authorized under section 1725A and only includes the limited scope of services; however, additional care can be authorized in the community under a separate authority. This type of care is addressed under a separate rulemaking with distinct eligibility criteria, which is published elsewhere in this issue of the **Federal Register**.

Another commenter stated that they were in favor of the proposed rule, but added that for the service to be effective, urgent care should include lab tests. VA agrees with the commenter and the benefit would cover certain lab tests, such as sexually transmitted disease testing and blood tests.

A commenter stated that the rule should clearly define urgent care versus convenience care. Specifically, the commenter stated that VA should distinguish convenience care for a veteran who goes to an urgent care clinic to refill a medication for a chronic condition or a visit strictly for obtaining a flu shot versus a flu shot given opportunistically to a veteran who is at the urgent care clinic for another purpose. The commenter also stated that the rule should specify the services provided; for example, diagnostic studies should be limited to those necessary for the acute condition that can be accomplished in that visit. VA appreciates the comment regarding refilling medication and addresses this topic below in more detail. Veterans will be permitted to refill medications, however, VA will only pay or reimburse for a 14 day supply; anything beyond that would have to be submitted to VA. Also, the visit to obtain a refill of a medication for a chronic condition may not be considered urgent care and may be considered as part of the veteran's longitudinal care. In addition, veterans can use the benefit for obtaining a flu shot and would also be able to obtain the flu shot if the veteran was at the qualifying non-VA entity or provider for another purpose. The rule clearly provides that flu shots are available through this benefit. Similarly, VA believes the rule is clear that services provided are limited to those necessary to treat a particular health condition, or a limited set of particular health conditions, without an ongoing relationship being established between the eligible veteran and qualifying non-VA entities or providers. In this rulemaking, we further clarified that episodic care has to be addressed in a single visit.

The commenter also suggested that diagnostics requiring scheduling at a later date should be coordinated by VA, as well as prosthetic items that are not readily available in retail stores, in addition to specialty care consultations. The commenter also stated that follow-up care should also be coordinated through VA.

When a veteran has seen an urgent care provider, the veteran is responsible for contacting VA to arrange for any follow-up care that is needed. We agree with the commenter in that prosthetics that are not readily available in retail stores should not be covered under urgent care. As discussed further below, in response to comments, VA is including language in a new paragraph (e) regarding prescriptions for medications, medical equipment, and medical devices for urgent care. VA will determine whether to provide the necessary care and services, such as prosthetic items, at a VA facility or through a community health care provider.

We are comparing the prescription of urgent care medications to the Veterans Community Care Program, under a separate rulemaking (RIN 2900–AQ46), which is published elsewhere in this issue of the **Federal Register**. We are addressing VA's payment and fulfillment of prescriptions obtained by covered veterans from eligible entities and providers, but would clarify VA's current practice that distinguishes circumstances under which VA pays for (versus fills) such prescriptions in new paragraph § 17.4600(e). Paragraph § 17.4600(e)(1) would match the practice proposed in § 17.4025 in RIN 2900–AQ46, and would also retain the practice in the Veterans Choice Program that VA will pay for prescriptions, including prescription drugs, over-the-counter drugs, and medical and surgical supplies available under the VA national formulary system written by non-VA health care providers furnishing services through VA community care, but would clarify that such payment would be for a course of treatment for urgent care that lasts no longer than 14 days. This current practice to limit payment for non-VA prescriptions is reasonable, as it would allow VA to ensure that any amount of medication in excess of 14 days would be filled through VA's Consolidated Mail Order Pharmacy system to ensure cost and quality controls. VA believes that the economies of scale related to bulk purchase of medications allow for the best maximization of Federal resources. Paragraph § 17.4600(e)(2) establishes the correlate rule from the Veterans Choice Program, and the rule proposed in RIN 2900–AQ46, that VA would fill longer-term prescriptions available under the VA national formulary system for courses of treatment that exceed 14 days if they are filled through VA's Consolidated Mail Order Pharmacy system. We note that these authorities would only be available for prescriptions furnished as part of urgent care under this section.

Paragraph § 17.4600(e)(3) further clarifies current practice under the Veterans Choice Program and would mirror provisions proposed in RIN 2900–AQ46 regarding VA paying for or filling prescriptions written by non-VA health care providers for durable medical equipment (DME) and devices. As we stated in our proposed rule for the Veterans Community Care Program (RIN 2900–AQ46), the Veterans Choice Program currently permits VA to pay for such prescriptions to be furnished by a community provider only when there is an urgent or emergent need for the

durable medical equipment or medical device, meaning the veteran has a medical condition of acute onset or exacerbation manifesting itself by severity of symptoms including pain, soft tissues symptomatology, bone injuries, etc. Urgent DME or medical devices may include, but are not limited to: Splints, crutches, canes, slings, soft collars, walkers, and manual wheelchairs. This current practice to limit payment for non-VA prescriptions of DME or medical devices to only what is immediately needed is reasonable, as VA must ensure administrative oversight as well as clinical appropriateness of all other DME and medical devices prescribed by non-VA health care providers. DME and medical devices are specific to a particular clinical need and in most cases are further specifically tailored to fit or serve an individual, and as such require direct provision by VA (except when urgently needed) to ensure clinical appropriateness and the best use of Federal resources. Paragraph § 17.4600(e)(3) establishes that VA may pay for prescriptions written by eligible entities or providers for covered veterans that have an immediate need for durable medical equipment and medical devices to address urgent conditions, and parenthetically references a non-exhaustive list of such devices to include splints, crutches, and manual wheelchairs. These provisions of the final rule are a logical outgrowth of both the proposed rule and the comments we received seeking clarification as to the scope of prescription benefits under this program.

Multiple commenters did not agree with VA changing the name of the benefit from walk-in care to urgent care. One commenter suggested that the benefit should be referred to as walk-in care with a clear distinction between retail clinics (those in pharmacies, grocery stores, and big-box stores) that are places of service code (POS) 17 and urgent care facilities recognized as places of service code (POS) 20. Another commenter stated that in calling the benefit urgent care, VA is trying to deter veterans from using it because they will not think their conditions are ''urgent''. The commenter also cited to a Congressional report describing this benefit as offering non-urgent care. The comment further noted that other provisions of regulations and VA's Community Care Network proposal use the term differently.

VA appreciates the comments, but does not believe that veterans will be deterred from using this benefit based upon the name. The lack of consistency in defining the name both in the industry and within the comments signifies the importance that VA define its own benefit and therefore VA looks towards a name that is easy to remember and has some market relevance. VA also does not believe it is necessary to distinguish between retail clinics that are POS 17 and urgent care facilities recognized as POS 20. VA will continue to develop educational materials on the benefit that will be available to veterans. Congress provided the Secretary authority to define what walk-in care includes through section 1725A(h). VA has exercised its authority to include services that are available at walk-in retail health clinics and urgent care facilities. As noted at the beginning of § 17.4600(b), the definitions only apply to this section.

Regarding the services provided by walk-in clinics, the commenter cited several examples of major chains (CVS, Walgreens) that offer preventive services (the commenter says about half of the services they offer appear to be preventive), but these would not be included in the benefit. The commenter argued that VA's rationale (the need to coordinate preventive care) is invalid because clinics have to provide records, and VA is required to coordinate care. Also, the commenter asked who would be liable if the veteran goes to an urgent clinic for something that VA considers preventive care and thus not within the scope of this benefit.

As we have already stated in this rulemaking, care is not just about providing the veteran's medical record, care includes the veteran establishing a relationship with the veteran's primary care provider, which cannot be accomplished in one urgent care visit. Regarding the exclusion of preventive services, such services are best coordinated and managed by a primary health care provider who addresses important disease prevention and treatment goals through bidirectional communication. Such a provider can also ensure that care is not duplicated, both improving patient care while reducing costs. The veteran would be liable for the cost for any care that VA determines is not within the scope of the benefit. We are not making any changers based on these comments.

A commenter asked whether the definition of urgent care would also include several key conditions or other uses of the term ''urgent care'' or ''urgent services'' in other VA regulations, specifically §§ 17.101, 17.106, and 70.71. Also, the commenter asked if the change of the statutory term walk-in care to urgent care would create confusion in the veteran community that could lead to billing disputes. The commenter also asked what is the likelihood that any care that is provided to an eligible veteran that does not meet this definition of urgent care, whether it be that the care was provided by a non-qualifying entity or provider or that the care provided was beyond the scope of urgent care as defined in this section, will not be covered by VA. The commenter stated that in these situations, the eligible veteran would be liable for the cost of such care and questioned how this determination will be made and whether there will be any provision for review and/or appeal. As stated in the proposed rule, the urgent care definition under § 17.4600(b)(5) only applies to the mandates under 38 U.S.C. 1725A. Regarding the regulations listed by the commenter, those regulations were developed at a separate time and address other types of benefits not provided under this rulemaking. We do not believe that the change in name to urgent care would result in billing disputes, but we can amend these regulations in the future if VA encounters any confusion regarding the interaction between this rule and the ones listed by the commenter. Moreover, bills can only be submitted by parties who have a contract, agreement, or other arrangement to furnish care and services under this section. By statute and regulation, only in-network providers can furnish urgent care under this section. Urgent care provided at an out-of-network facility will not be covered, and the veteran will be responsible for the cost of that care. An eligible veteran will be responsible for the payment for any care that does not meet the definition of urgent care; a non-eligible veteran would be liable for any care provided by any provider, whether in or out of VA's network. VA staff will determine whether the care meets the requirements of this section, and veterans and providers will be notified of their appeal rights in connection with VA's decision.

One commenter stated that veterans enrolled in priority group 4 who are paraplegic with bladder problems should be able to see any hospital to meet their health care needs, especially if they have to drive more than 30 miles to the nearest VA medical facility. Several commenters similarly indicated that veterans should be able to go to any doctor, hospital, or clinic for all of their care and not have to drive 60 miles to receive VA care. Section 1725A does not place a mileage limit for non-VA entities or providers that would offer urgent care. The intent of the urgent care benefit is to provide care that is

accessible to eligible veterans and is within the veterans' community. The provision of any other types of health care services, such as hospital or primary care, that is not covered under section 1725A is beyond the scope of the proposed rule. We are not making any changes based on these comments.

A commenter requested that urgent care be expanded to care that is directly related to a veteran's service-connected condition, specifically for wound care. This commenter stated that there is a dividing line between ongoing care and urgent care, especially if the veteran has a chronic condition, which may be service-connected, that sometimes has urgent symptoms. The commenter questioned if such a veteran would still qualify to receive urgent care. Under this rule, urgent care may be provided for the immediate treatment of a chronic condition, including a service-connected condition, that does not address important disease prevention and treatment goals. We are not making any changes based on this comment.

One commenter stated that the proposed definition of urgent care in § 17.4600(b)(5) defines urgent care, in part, as those services being provided by walk-in retail health clinics or urgent care facilities, as designated by the Centers for Medicare & Medicaid Services (CMS). The commenter indicated that they were not aware of any process by which the CMS ''designates'' urgent care facilities. Rather, the link in the **SUPPLEMENTARY INFORMATION** section of the proposed rule leads to the CMS website listing of places of service codes (POS) used for billing purposes. The commenter further stated that while CMS does designate POS codes that providers must use to bill for services, this does not result in CMS designating specific facilities as specific types of providers. We appreciate the commenter's input and agree that VA's proposed rule was not sufficiently clear on this issue. We are amending the definition of urgent care in paragraph (b)(5)(i) to state that urgent care includes services available from entities or providers submitting claims for payment as a walk-in retail health clinic (CMS Place of Service code 17) or urgent care facility (CMS Place of Service code 20). This concept had previously been included in the introductory language of paragraph (b)(5), but is now, with minor revisions, being relocated to paragraph (b)(5)(i), which has subsequently resulted in a renumbering of the other clauses and conforming amendments to other provisions of the regulation citing these provisions.

The same commenter stated that relying on Medicare POS codes is not an appropriate means to define urgent care providers. The commenter suggested that VA broaden the definition of urgent care to include all providers or facilities that provide episodic walk-in or urgent care services to Medicare beneficiaries. We think that the reliance on entities or providers who furnish services and bill as POS 17 or 20 facilities is consistent with the scope of services established under section 1725A. These facilities generally offer clinically appropriate and convenient care. See S. Rpt. 115–212, page 18. We recognize that VA was not required to limit the types of services to those available from providers who submit claims for payment under POS 17 and 20, but we believe that the services available from these types of facilities would offer a clear and readily verifiable distinction between those facilities that are included and those that are not.

A commenter recommended that Congress add a new benefit similar to the commercial Silver Sneakers to provide overweight veterans with limited income assistance in weight reduction. This comment recommends action by Congress on a separate program, which is beyond the scope of this rulemaking. We are not making any changes based on this comment.

One commenter stated that VA needs to provide dental services for veterans. Although the proposed rule was silent on dental care, we are clarifying in § 17.4600(b)(5)(ii)(A) that dental care is not covered under the urgent care benefit. Eligibility for dental care is complex and a limited number of eligible veterans qualify for this benefit under 38 U.S.C. 1712. In addition, there are a limited number of urgent care facilities that provide dental care. Eligible veterans seeking dental care will need to contact their local VA Dental Service. We are not making any changes based on this comment.

**Comments on Medications Prescribed in Urgent Care Visit**

Several commenters questioned how veterans would fill prescriptions that were prescribed during an urgent care visit. The commenters raised the following questions: What does a veteran need to do to get a prescription filled? would a veteran submit the prescription to VA and wait another week to obtain the prescription? what is the procedure for obtaining prescriptions? and who is responsible for the cost and what is the cost? Another commenter stated that they were in favor of the proposed rule, but added that for service to be effective, urgent care should include prescriptions. A commenter stated that the rule should specify that medications prescribed during an urgent care visit should be limited to a two-week supply. Another commenter recommended that VA address non-VA physicians' writing prescriptions for veterans eligible for non-VA care adding that those veterans should be allowed to have those prescriptions filled by a pharmacy.

As discussed above, VA is adding a new paragraph (e) to state that veterans will be allowed to have prescriptions written by the urgent care providers filled by VA. In addition, prior to the deployment of the new community care network contract, veterans who need a short-term medication (14 days or less fill) immediately may take it to any pharmacy and have it filled at their expense and be reimbursed by VA. Upon deployment of the Community Care Network contract, veterans will be able to use contracted pharmacies to fill the immediate need medications without paying out of pocket.

Long term medications must be sent to VA to be filled by VA, typically through a Consolidated Mail Outpatient Pharmacy. The copayments for medications under the new urgent care benefit follow VA's tiered medication copayment system. For more information on medication copayments see 38 CFR 17.110(b) or *https://www.va.gov/COMMUNITYCARE/revenue_ops/copays.asp#Medications.* We are not making any changes beyond the inclusion of paragraph (e) based on these comments.

**Comments on Information Included on Website and Communications**

Many commenters had concerns about how information regarding the new urgent care benefit would be disseminated to veterans and what type of information would be included on VA's website. Several commenters had suggestions on the type of information that should be provided on the website and the type of information that should be communicated to veterans on this benefit.

One commenter recommended that the rule should focus more on the importance of creating a website that outlines urgent care in an accessible way. The commenter stated that the website should include the name, locations, contact information for the qualifying non-VA entity or provider, and the type of care that a veteran is eligible to receive. Similarly, several commenters wanted to ensure that veterans would be able to see which providers would be covered, whether preauthorization would be required, and

the scope of services (what constitutes episodic care versus longitudinal care). Similarly, another commenter encouraged VA to ensure that information about available services is carefully defined, vetted, and communicated clearly to veterans. Another commenter stated that, as proposed, the information about the scope of services offered should be ''site specific,'' and the directory of locations should be updated regularly to ensure accuracy. A commenter added that in order for the program to be successful, VA must make it easy for the veteran to identify urgent care facilities within their community. Along with information regarding scope of services and locations, the commenter urged VA to also include information about the required copay amounts that veterans will be charged when seeking urgent care. In addition, one commenter was concerned how veterans will know that they are eligible for urgent care, particularly in cases when driving time, as determined by geospatial mapping can be disputed.

VA agrees with the commenters that it is important to provide veterans with information on the new urgent care benefit. Veterans will have access to urgent care benefit information on VA's website (*www.va.gov*), and they can call their local VA medical facility to confirm eligibility. The website, which will be updated regularly, will include information on eligibility, examples of excluded services, copayment requirements, and a list of qualifying non-VA entities or providers. We are making one minor edit to this portion of the rule, to clarify that VA's website will provide the information described above. It is possible that in the future, much of this information will be presented on a contractor's website, so to avoid duplicating content (or potentially creating inconsistencies between two sites), we are revising the rule to not state that VA's website will contain this information, but merely provide it. If, in the future, a contractor's website is used, VA's website will provide veterans the information they need through links to these third party sites. To clarify for the commenters, any enrolled veteran who has received VA care under chapter 17 in the last 24-months is eligible for the urgent care benefit. Drive time and geospatial mapping are not a consideration for the new urgent care benefit. In addition, only urgent care received from a qualifying non-VA entity or provider will be covered under the benefit; veterans obtaining urgent care from out-of-network providers will be responsible for the cost of the care.

Another commenter stated that VA should publish a website containing information on urgent care. However, if this website experienced technical difficulties, the commenter asked if veterans would be able to use a 24 hour a day/7 day a week/365 day a year toll-free number to verify whether a non-VA provider or entity is in VA's network. VA agrees with the need to provide this information through other means, and eligible veterans may call their nearest VA medical facility, which will have a list of authorized providers. VA fact sheets on this benefit will list both the online web address and call-in numbers. However, this is an operational matter and does not require regulation, so we are not making changes to the rule based on these comments.

Another commenter recommended that VA provide notice to veterans of the proposed rule changes upon implementation. The commenter indicated that simply providing this information on the VA website will not be sufficient notice and that VA should post this information in prominent places within each VA medical facility, including information about the location of the nearest urgent care centers. VA agrees that communication about this benefit will be crucial, and as a result, VA is developing posters, fact sheets, and other guidance that will detail what care and services are included in the urgent care benefit and will be provided when the new benefit goes into effect. The name and location of qualifying non-VA entities or providers will be available on VA's website or by contacting VA. We are not making any changes based on this comment.

A commenter stated that VA would publish a website with the information on the non-VA entities or provides but questioned how often this site would be updated to indicate additions to the list as well as deletions from the list. The commenter added that without requiring prior approval from VA, a veteran could, through no fault of his or her own, receive services from a non-VA provider who is no longer approved for the program. VA will update the list of qualifying non-VA entities and providers under this program on a regular basis. VA is not making any changes based on this comment.

A commenter recommends that preventative measures be in place to alert veterans prior to incurring charges that they will be liable for the costs of care. VA will provide urgent care benefit information on VA's website at *www.va.gov,* which will include information on veteran eligibility for the benefit, available services, and qualifying non-VA entities or providers. If a veteran is not eligible, receives services that are not covered, or receives care from an out-of-network provider, the veteran may be responsible for the cost of that care.

Another commenter was concerned that the VA website will not provide sufficient information for veterans to allow them to determine whether a retail walk-in care clinic or the more extensive range of services available at an urgent care facility better suits their needs. VA will provide information on qualifying non-VA entities and providers on a website. Veterans will also be able to call the qualifying non-VA entity or provider to determine which services they provide. VA believes this will allow them to determine which qualifying non-VA entity or provider can best address their particular needs. In addition to VA's website, VA is developing posters, fact sheets, and news releases to educate and inform veterans, VSOs and community providers about the new benefit. VA will be able to update this information to reflect concerns, trends, and advances in this benefit as needed.

Another commenter stated that new rules need to be very clearly defined and that VA should post flyers in every VA medical facility as well as mail such flyers to accredited Veteran Service Offices, County Veteran Service Offices, and Tribal Veteran Service Offices. VA is developing guidance on the changes to health care and services that will be provided under 38 U.S.C. 1725A. This guidance will be widely distributed in a variety of formats to veterans, Veterans Service Organizations (VSO), and the public. We are not making any changes based on these comments.

Another commenter recommended that VA provide patient and clinician education regarding aspects of this proposed rule. VA will provide training and education on our website for both providers and veterans. In accordance with section 121 of the MISSION Act, VA will be developing and administering an education program that teaches veterans about their health care options through VA; moreover, VA will be communicating with veterans through multiple avenues, with VA's website being the most comprehensive method of obtaining information on the new urgent care benefit. Additionally, as required by section 122 of the MISSION Act, VA is developing and implementing a training program to train employees and contractors of the Department on how to administer non-VA health care programs, including the

urgent care benefit. We are not making any changes to the rule based on these comments.

One commenter stated that veterans should not have to make telephone calls to arrange for or confirm care. VA agrees with the commenter and is constantly searching for new avenues to expand veteran access for health care services. In addition to traditional in-person or telephone scheduling of appointments, veterans can communicate with their medical team using secure email via the My HealtheVet portal, and many services are now available electronically via video telehealth, allowing veterans to schedule appointments and even to receive face-to-face care from their home, office, or other location without traveling to a VA facility. We are not making any changes based on this comment.

We note here we made minor revisions to § 17.4600(a) to clarify the scope of the urgent care benefit under this rulemaking. Specifically, we emphasize that eligible veterans may obtain urgent care in accordance with the requirements and processes set forth in this section, and that qualifying non-VA entities or providers must be in VA's network and will be identified in accordance with paragraph (c)(2). We regard these are clarifying edits only. We also make minor clarifying edits to paragraph (c)(2) to note the website will provide information on urgent care, and that the contact information will be for qualifying non-VA entities or providers from which urgent care is available under this section.

**Comments on Emergency Care**

Many commenters had suggestions and recommendations regarding the inclusion of emergency care or emergency follow-up care as part of this benefit.

Several commenters suggested that a patient should be admitted to a local non-VA hospital at VA expense if the urgent care provider deems it necessary. Similarly, some commenters questioned what would happen if a veteran seeks care in an urgent care clinic and during this visit the health care professional determines that the veteran requires emergency care—would the veteran be billed for the subsequent emergency care visit? Another commenter requested that VA allow access to emergency care without pre-authorization. Another commenter similarly stated that they lived 45 miles from their nearest VA medical facility and that they should be able to visit their local hospital emergency room (5 miles away) in the event they encounter an emergency. Several other commenters suggested that the rule should also include emergency room care. Another commenter also stated that veterans should have access to urgent care for the emergency treatment of conditions incurred in service.

The intent of this rulemaking is to provide eligible veterans the ability to receive treatment for certain, limited, non-emergent care from approved walk-in retail health clinics and urgent care centers. The authority for this new benefit, section 1725A, precludes the inclusion of emergent care by its definition of walk-in care in 1725A(h). Therefore, any emergent care deemed necessary by the urgent care provider will not be provided under section 1725A and the urgent care benefit. Instead, VA's authority to provide emergency treatment in the community is 38 U.S.C. 1725 and 38 U.S.C. 1728. The eligibility criteria for emergency treatment in the community are defined through these statutes and their implementing regulations and are also administered separately. Veterans seeking emergency care may be liable for the cost of such care. We are not making any changes based on these comments.

A commenter additionally stated that Congress should give VA the ability to pay copayments, even in the case of emergency. We appreciate the commenter's suggestion, but as noted in the comment itself, this would require Congressional action. As such, this is beyond the scope of the rulemaking, and we are not making any changes based on this comment.

One commenter suggested that the urgent care benefit under 38 U.S.C. 1725A meant care provided in non-VA emergency rooms and that veterans would now be charged for emergency room care. As previously stated in this rulemaking, the current regulations that address emergency room care at non-VA medical facilities will not be amended by this rule. We are not making any changes based on this comment.

Several commenters stated that patients are often confused between the definition of urgent care and emergency care and encouraged VA to clearly define what is meant by urgent care, and how this is distinguished from emergency care. The term emergency treatment is defined in statute at section 1725(f)(1)(B) as care or services rendered in a medical emergency of such nature that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health. Urgent care, as defined in the proposed rule, is care that does not require immediate, emergent medical attention. If veterans are unsure whether or not they are having a medical emergency, they should call 9–1–1 or visit their nearest emergency room. We are not making any changes to the rule based on these comments.

**Comments on Contracts With Non-VA Entities or Providers and Billing**

Several commenters requested that community health care providers accepting Medicare or Medicaid be required to accept veterans and that veterans be able to receive care at any facility. Health care providers are independent businesses, licensed by the State in which they are offering health care services to the public. There are no statutes or Federal regulations that require an independent business to contract with a Federal agency to provide health care services without the consent of the provider. The comment addresses VA's community care program more broadly and is thus beyond the scope of this rulemaking, which is limited just to the urgent care benefit.

One commenter questioned how the contracts between the urgent care facilities and VA would be written, specifically asking if VA or the veteran will be the payer. The commenter indicated that the veteran should not be billed when VA fails to pay the urgent care facility timely. One commenter was also concerned that the non-VA entities or providers may not accept VA patients because VA has not issued payments timely. Similarly, another commenter further questioned whether the payment to the urgent care facility will be faster than similar payments to care in the community. The commenter was concerned that if the payment to the urgent care facility takes too long, the bill for care could be sent for collection, destroying the veteran's credit rating. Also, the commenter asked what would happen if VA took too long to pay and the urgent care facility billed the veteran's Medicare or other health insurance, incurring a bill above the VA copayment saying that they gave VA a reasonable amount of time to pay. Qualifying non-VA entities or providers must have a contract, agreement, or other arrangement to furnish benefits under this section. The terms of these contracts or agreements will define the provider's ability to seek payment and VA's responsibilities for payment. VA will be administering this benefit through a managed network, where VA has a contractual relationship with a third-party administrator (TPA) that in turn has contracts or agreements with a network of providers. Payments are similarly separated—VA pays the TPA,

and the TPA pays the provider. We believe that these arrangements provide sufficient assurances that eligible veterans will not be billed for urgent care furnished by qualifying non-VA entities or providers. As we have stated previously, though, if an eligible veteran received urgent care from an entity or provider that is not a qualifying non-VA entity or provider, VA would have no contract or mechanism to prohibit that provider from billing the veteran. We recommend veterans contact VA if they have any question as to whether or not the walk-in retail health clinic or urgent care center they are planning to access is in VA's network. We are not making any changes based on this comment.

A commenter indicated that the proposed rule would increase access to much needed health care. However, the commenter was concerned that non-VA doctors would not want to enter into contracts with VA because the pay may be less than their regular fees. VA has entered into contracts with TPAs to administer this benefit, and we believe the payment rates for providers under these contracts are sufficient to maintain an adequate network of providers because they are comparable to rates negotiated by other Federal health care agencies and third-party health plan contracts. We are not making any changes based on this comment.

A commenter recommended that if an agreement currently exists with a non-VA provider or entity, VA should amend such contracts by adding an addendum to include urgent care. The commenter wanted to avoid creating a separate agreement for urgent care because it would cause an undue burden on the non-VA entity or provider and having said addendum would fast track the process and bring needed service expansion to eligible veterans. The method VA uses to procure these services is outside the scope of this rulemaking, which deals exclusively with the scope of the benefit, not how it will be purchased. We are not making any changes based on this comment.

Another commenter stated that the rule would be a huge advantage for veterans to receive timely access to urgent care services. However, the commenter cautioned that CMS should impose strict billing guidelines so that veterans do not end up with surprise bills. The commenter suggested that facilities and providers be attested with CMS and thoroughly perform Recovery Audit Contractors (RAC) audits of any facility treating veterans. Another commenter cautioned that VA must make certain that veterans are not burdened with a financial obligation beyond the copayment. We note that CMS billing is not applicable to VA; while VA generally pays CMS rates, CMS does not pay claims on VA's behalf or audit VA's community network of providers. VA does not anticipate veterans will have surprise bills for the reasons described above concerning VA's contractual arrangements with TPAs, and the TPAs' relationships with providers. Veterans will only be charged a copayment for the services, if applicable, by VA. However, as noted, care that is provided to a non-eligible veteran or by a non-qualifying entity or provider could be billed to the veteran. We are not making any changes based on these comments.

Another commenter was concerned that VA contracts with retail walk-in clinics and urgent care centers will not adequately address the difference in the care offered by the various types of retail walk-in clinics versus urgent care centers. VA understands and appreciates the differences and similarities between the types of care offered at urgent care facilities and walk in care clinics in the private sector. VA will provide information on a website on the qualifying non-VA providers and entities. VA believes that veterans will be able to call the qualifying non-VA entity or provider would best address their needs. We are going to have TPA contracts that require the TPA to provide a network of providers to furnish these services on our behalf. VA appreciates the commenters concern and will ensure that the information available to veterans is adjusted to ensure veterans understand this benefit and can use it as intended. The veteran will be able to go to whichever contracted facility has the service that they require.

One commenter requested clarification on the process stated in proposed § 17.4600(b)(4) stating that VA will enter into an agreement with non-VA entities or providers to furnish urgent care. The commenter stated that they believed that it is in the best interest of the veteran that a streamlined process be established to ensure the availability of urgent care to veterans, particularly those who live in rural areas. The commenter also requested that VA specify that the payment for urgent care services will be at the same rates Medicare pays the specific providers for those services. VA will be contracting with TPAs to provide urgent care. The payment rate for care and services will be included in the terms of the contract. We are not making any changes based on these comments. We revise the proposed definition of a qualifying non-VA entity or provider to recognize explicitly that VA intends to use third-party administrators to make urgent care available to veterans. In implementing this authority, VA intends to utilize contracts with non-VA entities, third-party administrators, to furnish services under this section. The third-party administrators would, in turn, have their own contracts or agreements with direct care providers in the community that furnish urgent care to veterans under this section. To remove any ambiguity as to what we mean when we refer to qualifying non-VA entities or providers in this regulation, we are recognizing this arrangement with this new language. This is consistent with both the plain language of the statute, as well as Congressional intent. In a Committee report, the Senate Veterans' Affairs Committee stated in the context of section 1725A(c) that, ''It is the Committee's intent that the authority in this section be exercised nation-wide, among several types of entities or providers to ensure adequate coverage, so that all veterans have the option of utilizing this convenient, walk-in care.'' S. Rpt. 115–212, p. 19.

One commenter suggested that VA should consider changing its current policy to serve as the secondary payer for urgent non-service connected care delivered in the community. VA does not have authority to act as a secondary payer for urgent care; such a change would require Congress to amend VA's statutory authority. We are not making any changes based on this comment.

A commenter was concerned how VA would qualify the non-VA entities or providers as ''approved'' vendors. VA will be entering into contracts or agreements with TPAs to access a network of urgent care centers and walk-in retail health clinics to create a network of qualified local providers. VA defines a qualifying non-VA entity or provider to mean a non-VA entity or provider that has entered into a contract, agreement, or other arrangement with VA to furnish urgent care. We are not making any changes based on these comments.

**Comments on Information Sharing With Community Providers**

Multiple commenters had concerns and suggestions regarding medical record sharing with qualifying non-VA entities or providers.

One commenter indicated that strategically-placed partnerships with urgent care providers must be combined with bidirectional access to the veterans' medical data through VA provided highly secure encrypted hardware that will not locally store

personal health information (PHI). Another commenter similarly stated that VA medical records should be shared with the urgent care clinics. One commenter suggested that physicians and insurers enroll and certify in VA-mandated reporting and integration of the veterans' medical records. A commenter proposed that VA set forth the expectation that non-VA entities or providers must provide electronic interoperable visit summaries to VA so that this information can be added to the electronic health record. The commenter further stated that submission of these visit summaries should be a condition for payment. Another commenter worried that the urgent care provider would not be able to provide the veteran the best care needed because the provider does not have access to the veteran's VA health record at the time of the urgent care visit. The commenter also noted that this lack of access to medical records may, in turn, not reflect that the veteran is addicted to opioids, or the urgent care facility could dispense medication that may adversely interfere with a medication that has been prescribed by VA. Another commenter suggested that non-VA urgent care entities possess the information technology capabilities to be able to interface with VA electronic medical record system.

Section 1725A(e) of 38 U.S.C. requires VA to ensure continuity of care for this new benefit; specifically, VA is required to establish a mechanism to receive medical records from walk-in care providers and provide pertinent medical records to providers of walk-in care. VA participates in industry standard Health Information Exchanges (HIE) to share medical records, which has security measures in place to protect the veteran's medical records. If the provider does not participate in an HIE, VA can provide pertinent medical records through other means, including through requesting access to a secure web-based version of veterans' medical records (Community Viewer). Therefore, although VA acknowledges the commenter's concern about potential negative health outcomes, which include adverse reactions to medications or substance abuse of opioids, if the qualifying non-VA entity or provider is not provided access to the veteran's medical records, VA has systems in place, either through the HIE or through community viewer, to make the needed health information available to the qualifying non-VA entity or provider at the point of care.

Continuity of care will be managed because the urgent care provider must submit medical documentation back to VA so that the veteran's VA provider has access to the information. If further treatment is required, the veteran is responsible for contacting VA to coordinate any follow-up care. We are not making any changes based on these comments.

**Comments on Other VA Health Care Programs**

Many commenters submitted comments related to VA's Community Care Program or Veterans Choice Program. These comments are beyond the scope of the rulemaking as this rulemaking only implements 38 U.S.C. 1725A, which is distinct from VA's authority to provide the care in the community generally under 38 U.S.C. 1703, as amended by section 101 of the MISSION Act. However, we are summarizing them here in the interest of transparency.

One commenter indicated that they wanted to comment on the first two items of the VA News Letter dated January 30, 2019. Because the commenter could not find a comment section in the VA News Letter, the commenter decided to comment on the rule. The commenter added that urgent care was the third item, for which they didn't provide a comment. Instead, the commenter requested more information on the grandfathering of the Veterans Choice Program and the qualification standards for the new access standards for the program that would replace the Veterans Choice Program. Another commenter asked if the proposed rule would mean that if a veteran lives more than 30 minutes away from their nearest VA medical facility the veteran can do all of their health care outside VA. Multiple commenters stated that they routinely had their appointments cancelled when they sought care in the community and that the average wait time for the appointment was five to six months. One commenter added that they had no choice in where to receive the care in the community because the VA physician ordered the appointment. A commenter similarly asked if the proposed rule means that since it takes a month to get a VA mental health appointment, the veteran can go to a local health care provider. Another commenter suggested that the drive distance to obtain urgent care should be 50 miles. The commenter stated that they had to receive care from emergency rooms because they were not able to obtain an appointment in a VA medical facility timely. Another commenter stated that the proposed new travel distances, travel times, and appointment wait times do nothing to improve a veteran's care. The commenter further stated that changing from travel distance to travel time criteria will allow more veterans in metropolitan areas where there are large VA hospitals to use non-VA providers, which will deplete VA funds and deprive rural veterans of non-VA care for services not provided in smaller VA hospitals and clinics. Another commenter concurs with the proposed access standards and holds VA accountable for meeting, if not exceeding them. Another commenter also states that distance and time are major factors when someone is suffering from injury or pain and mentions that the 40 mile criterion is essential for all rural areas. Similarly, a commenter questioned if the proposed rule meant that the veteran can find a local cardiologist rather than the 75-mile drive to the nearest VA medical facility.

This rulemaking does not implement or affect eligibility under section 1703 for VA's Community Care Program of Veterans Choice Program. Travel distances are also not a consideration for urgent care. Section 1725A does not place a mileage limit for non-VA entities or providers that would offer urgent care. VA will enter into contracts or agreements with qualifying non-VA entities or providers within the community, and we believe this will expand access to care in the community (through additional locations) and in VA facilities (by freeing up some resources). These comments are beyond the scope of the rulemaking. We will not make any changes to the rule based on these comments.

One veteran was not in favor of the rule, stating that the rule morphs fee basis in name only in an attempt to convince veterans that something has changed for the better. The commenter recommends that VA replace the Choice Act with the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). The Veterans Choice Program authorizes VA to furnish hospital care and medical services to eligible veterans, as defined in § 17.1510, through agreements with eligible entities or providers, as defined in § 17.1530. See §§ 17.1500 through 17.1540. The authority for the Veterans Choice Program is Sec. 101, Public Law 113–146, 128 Stat. 1754, as amended, and VA's authority to furnish care and services under that Program will end on June 6, 2019. CHAMPVA furnishes medical care to certain dependents and survivors of active duty and retired members of the Armed Forces and is authorized under 38 U.S.C. 1781. The proposed rule did not address the Veterans Choice Program, the Veterans Community Care Program, or CHAMPVA, and any comment regarding

those programs is beyond the scope of this rulemaking.

**Comments on Quality**

Several commenters were concerned that the quality of providers at urgent care facilities would not be as good as the quality of care veterans receive at VA facilities. One commenter stated that VA already provides same-day access to veterans at every VA facility. The commenter stated that this is the preferred source of care in terms of quality, cost effectiveness, and coordination of care. If there are staffing or space needs to ensure same day urgent care access at every VA facility, that should be addressed first through oversight and funding to fill the over 40,000 unfilled positions in the Veterans Health Administration. Another commenter recommended that treatment for rated illnesses and complex issues should be under tighter VA control and tight certification of non-VA providers. VA agrees with the commenter that quality health care services are important; therefore, we have revised the procedures under § 17.4600(c) to add a new paragraph (4) that states that urgent care furnished under this section must meet VA's standards for quality established under 38 U.S.C. 1703C, as applicable. We note that VA's standards for quality may not be fully incorporated into the contracts or agreements by the effective date of this regulation, or some standards may refer to population-based metrics that are not relevant in individual circumstances, and therefore we have included the language ''as applicable'' to demonstrate that urgent care will only be required to meet the standards for quality once those standards have been articulated and are in the contracts or agreements. VA reiterates that it is solely the veteran's choice whether to seek urgent care at a qualifying non-VA entity or provider or seek care at a VA facility. VA further notes that the funding to fill the over 40,000 VA unfilled positions as stated by the commenter is beyond the scope of the proposed rule.

A commenter stated that there must be a mechanism to generate data to assess quality improvements and cost savings and accountability for the $1.4 billion in spending for the urgent care benefit. VA is working on processes to assess quality improvements and cost savings for the benefit. We will conduct reviews once the benefit is implemented. However, as these are internal administrative matters, we are making no changes to the rule based on this comment.

A commenter questioned how the proposed rule would affect providers and what provisions are being taken to ensure there is no provider burnout as clinical roles have a high burnout rate. The commenter added that it would be unfortunate to have greater access, but poorer quality of care due to burnout. We do not expect this benefit would affect or contribute to provider burnout. If the commenter is referring to qualifying non-VA entities or providers, they are independent businesses, licensed by the individual States in which they are offering health care services to the public. It is their responsibility, and in their interest, to determine how many patients can be treated. VA agrees with the commenter that quality health care services are important; therefore, VA will require the urgent care furnished under this section to meet VA's standards for quality under section 1703C. If the commenter is referring to burnout of VA health care professionals, although the proposed rule itself does not address provider burnout, VA is using VA patient aligned care teams (PACT) help manage the flow of care and information. Several studies have shown PACTs to be associated with lower provider burnout.[1] We are not making any changes based on this comment.

A commenter stated that the proposed rule should address quality as well as access. The commenter urged VA to include in the contracts with the non-VA entity or provider a requirement that they have earned the National Committee for Quality Assurance Patient-Centered Connected Care Recognition. The commenter indicated that this program is designed to help ensure that urgent, retail, and other clinics connect and coordinate with the patient's primary care provider. The commenter further stated that Patient-Centered Connected Care Recognition creates a roadmap for how urgent care and retail clinics can fit into the medical neighborhoods of Patient-Centered Medical Homes and Patient-Centered Specialty Practices, which closely align with the VA MISSION Act of 2018's non-urgent care quality standards by avoiding re-creating the wheel and requiring non-VA entities or providers to meet ready-made standards. The National Committee for Quality Assurance (NCQA) is a private organization that contracts its services out to the private sector and government agencies to assist them with measuring and improving quality. Another commenter suggested that non-VA entities receive Joint Commission accreditation prior to being included in the VA urgent care network of providers. The commenter also indicated that the proposed rule does not mention assessing quality metrics for the non-VA entities or providers who will provide urgent care services. The commenter recommends that every provider should be pre-screened for equivalent credentials, training, and expertise that is required of VA health care professionals. Lastly, the commenter recommended that every provider of urgent care should track and report quality processing and outcomes of the veteran patients in order to adequately assess the quality of care provided.

As stated before, VA agrees with the commenters that quality health care services are important; therefore, we have revised the procedures associated with urgent care under § 17.4600(c) to include a new paragraph (4) that states that urgent care furnished under this section must meet VA's standards for quality established under 38 U.S.C. 1703C, as applicable. We are not making any changes based on this comment.

A commenter stated that VA is the national leader in integrating primary care and mental health, and they believe that walk-in clinics will result in inferior, fragmented mental health care by providers with significantly less training and supervision. Although the majority of the care provided for mental health is generally considered longitudinal care, if a veteran has a need for urgent mental health care, they may receive such care through this benefit. VA emphasizes that long-term mental health care should be coordinated through the veteran's primary care provider and not through the urgent care benefit. VA has also been expending resources to expand access to immediate and urgent mental health care, and we believe that better patient outcomes can be achieved by furnishing such care through VA. In 2007, VA established the Veterans Crisis Line, which provides confidential support to veterans in crisis. Veterans, as well as their family and friends, can call, text, or chat online with a caring, qualified responder, regardless of eligibility for VA care or enrollment in VA's health care system. VA is committed to

[1] Karin M. Nelson, MD, MSHS; Christian Helfrich, MPH, Ph.D.; Haili Sun; et al: Implementation of the Patient-Centered Medical Home in the Veterans Health Administration Associations With Patient Satisfaction, Quality of Care, Staff Burnout, and Hospital and Emergency Department Use: JAMA Intern Med. June 23, 2014;174(8):1350–1358; Christian D. Helfrich, MPH, Ph.D., Joseph A. Simonetti, MD, MPH, Walter L. Clinton, Ph.D.; et al: The Association of Team-Specific Workload and Staffing with Odds of Burnout Among VA Primary Care Team Members: J Gen Intern Med February 23, 2017:32(7):760–6.

providing free and confidential crisis support to veterans 24 hours a day, 7 days a week. In addition, VA has implemented a ''no wrong door'' philosophy so that every VA employee will assist veterans in need.

**Comments on VA Staffing, Hiring, and Budget**

Several commenters had concerns and suggestions regarding internal VA structure, including VA's staffing, hiring, and budget considerations. We are addressing the comments related to these subjects in this section, but because they are outside the scope of this rulemaking, we will not be making changes as a result of these comments.

Multiple commenters expressed concerns that, absent increased and dedicated funding by Congress equal to the actual costs of the new urgent care program, which they noted may be grossly underestimated by the administration and the Congressional Budget Office, funds may be diverted from traditional medical services within VA or other VA services. One commenter suggested Congress should provide funding for double the estimated usage. Another commenter strongly urged VA to work with Congress to provide the necessary additional funding to existing VA medical facilities that have the capability to provide urgent care services. VA performed an actuarial analysis to estimate the total cost of the increased reliance that would result from the new MISSION standards. We will continue to monitor resource needs and utilization and respond accordingly. The provision of funds from Congress for the urgent care benefit is beyond the scope of the proposed rule.

Several commenters stated that privatizing VA health care, or any move towards privatization, is the wrong move and will eventually harm veterans and cost taxpayers hundreds of billions of dollars in giveaways to the private sector. VA has no intention to privatize and does not believe that this benefit moves towards privatization. The purpose of this benefit is to implement section 1725A by providing veterans a convenient option for seeking episodic care.

One commenter additionally suggested that because the government already has TRICARE and Medicare, VA should authorize a special class of eligible users and provide separate funding for the anticipated impact that would allow veterans more access to civilian care, but within already established program channels. TRICARE and Medicare are not entities that are governed by VA and, as such, the substitution of VA care for these two benefits is beyond the scope of the proposed rule and is neither authorized nor even contemplated by law. We are not making any changes based on these comments.

Multiple commenters were concerned with the rule because they believe that veterans' care should be managed by VA. VA is the primary provider of care and services to veterans; the proposed rule will not change that. The proposed rule will increase veterans' access to care and services available from local community providers in limited circumstances. VA believes that the implementation of this new benefit, as structured, will encourage veterans to seek care from VA facilities for primary and longitudinal care and only access urgent care when necessary and appropriate to treat an episodic condition.

One commenter suggested that VA staff VA medical facilities with medical personnel from the Reserve and National Guard to accomplish their active duty training. The commenter added that VA should incentivize civilian workers and retired medical persons to volunteer their services, possibly under the supervision of an active duty medical person. We appreciate the commenter's suggestion; however, the appointment of health care professionals as VA employees or volunteers is beyond the scope of the proposed rule. We are not making any changes based on this comment.

One commenter suggested that VA medical facilities have longer operating hours and use local doctors and nurses to work in VA medical facilities. In doing so, VA would not have a need to use the Veterans Choice Program. The operating hours of VA medical facilities are beyond the scope of the proposed rule, but we note that VA is implementing the Improving Capacity, Efficiency, and Productivity initiative, a collaboration among VA offices focused on creating efficient practice solutions, including offering extended hours (evenings and Saturdays), using telehealth and video appointments, providing facilities with appropriate guidance for overbooking, and adopting point-of-care scheduling. We are making no changes based on this comment.

One commenter stated that VA cannot staff their VA medical facilities and questioned why VA was trying to make veterans think that VA could open walk-in clinics. Although VA provides same-day services at VA medical facilities, the urgent care benefit will not be creating new VA medical facilities to provide urgent care to eligible veterans, nor will it impose any new obligations on VA facilities in terms of care delivery. Urgent care will be furnished through qualifying non-VA entities or providers, as stated in 38 U.S.C. 1725A. We are not making any changes based on this comment.

One commenter requested that VA fill the existing vacancies at all VA departments. The commenter added that not hiring persons for empty existing vacancies is causing problems for veterans. We presume that the commenter meant the hiring of VA health care professionals. The proposed rule addressed urgent care authorized by 38 U.S.C. 1725A. The hiring of VA health care professionals is beyond the scope of the proposed rule. We are not making any changes based on this comment.

One commenter stated that one of the most important programs within the VA system is training of residents. The commenter expressed concern that a reduction in volume at VA facilities due to reliance on the new urgent care benefit may result in a reduction in this program, or a reduction in the types of training or opportunities it could provide. The commenter states that if these training programs for residents are reduced or eliminated it could have a far-reaching downstream effect, not only on the nation's veterans but on the nation as a whole. We do not believe that the urgent care benefit is a diversion of care away from VA medical facilities. We are not making any changes based on this comment.

Multiple commenters addressed the need for triage or a nurse line. In particular, one commenter agreed that urgent care is a nice addition to VA health care, but believed that VA should have a few checks and balances for the use of urgent care. The commenter recommended that every veteran who seeks urgent care should be required to call their VA clinic or be provided triage or VA nurse helpline prior to running out and receiving urgent care. The commenter also recommended hiring more health care staff and manning a VA urgent care clinic after hours. The commenter stated that when possible, the health care needs of the veteran should be kept in the VA health care system. Veterans always have the ability to contact a VA call center or their VA or VA-authorized primary care provider for guidance or to seek care within the VA health care system. However, pre-approval from VA is not a requirement for eligible veterans to receive urgent care, and this benefit is intended to be a supplement to existing VA services. We are not making any changes based on this comment.

One commenter recommends delaying the implementation of the proposed rule. For the reasons stated under the Congressional Review Act heading below, we do not believe it would be in the public interest to delay the effective date of this rule. We are not making any changes based on this comment.

**Comments on Veteran Eligibility and Other Benefits**

One commenter opposed the use of walk-in clinics to supplement the primary and specialty care provided by VA and demanded that VA place a firm limit on the number of times a patient may use these walk-in clinics and the type of services that will be provided, exercise oversight authority over these clinics as providers, and work to increase VA's ability to provide same-day access at VA facilities. VA agrees with the commenter as the urgent care benefit is not meant to supplant primary and specialty care provided by VA. VA is not limiting the number of visits, as VA is striving to ensure veterans will have access to convenient care when necessary. VA is limiting the types of services provided to ensure that preventive care is not provided through this benefit and the veteran's primary care is managed through the veteran's primary care physician. VA is working on increasing internal capacity at medical facilities while ensuring veterans have access to facilities to address urgent care needs.

Several commenters recommended that VA allow veterans to present their VA medical card as insurance to any health care facility in the community. Another commenter similarly recommended that VA provide a State and County wide database that contains all of the veterans in the VA health care system that can be accessed by the attending physician. The commenter added that the chip in the veteran's VA or Veterans Choice Program card can be used for this purpose. Similarly, one commenter recommended that VA patient identification cards contain all the data related to the veteran's status, including priority group, enrollment status for the Veterans Choice Program (40 mile rule), and disability rating. The commenter also stated that if a care center or doctor accepts Medicare or Medicaid, they should also accept any authorized care, including Veterans Choice and Tri-West. Several commenters similarly stated that veterans should automatically receive urgent care at any non-VA entity or provider in the country by simply showing the VA card with the veteran's picture on it, and getting reimbursed by VA, rather than having to drive to the VA facility miles away. With today's technology, the commenter indicated that a veteran should not be making calls to arrange or confirm care. These comments all deal with programs or benefits that are beyond the scope of this rulemaking. While VA provides the Veteran Health Identification Card (VHIC) for veterans enrolled in the VA health care system, VA is not an insurance program and the cards do not provide proof of health insurance coverage. VA does not place the veteran's personal or medical information on electronic chips embedded in VA issued cards; instead, VA utilizes a secure national database available to VA clinicians and staff charged with the responsibility for providing care and services to eligible veterans. We are not making any changes based on these comments.

One commenter indicated that they highly recommend physical therapy assistants and occupational therapy assistants as TRICARE providers. The commenter added that both health care professionals are supervised by physical therapists and occupational therapists and are an underutilized health care resource. The use of physical therapy assistants and occupational therapy assistants as TRICARE providers is beyond the scope of the proposed rule. We are not making any changes based on this comment.

One commenter was concerned with what constitutes having received health care for purposes of meeting the 24-month eligibility requirement. Another commenter did not believe VA should limit the urgent care to veterans seen by VA within the last 24 months. The eligibility requirement is set forth in 38 U.S.C. 1725A(b), and VA cross-referenced this requirement in its proposed rule without further elaboration. However, as we explained, this provision of law requires the veteran be enrolled in VA's health care system and have received care under chapter 17 within the 24-month period preceding the furnishing of walk-in or urgent care. This latter requirement would be met in any of the following circumstances: Care provided in a VA facility, care authorized by VA performed by a community provider, care reimbursed under VA's Foreign Medical Program (38 U.S.C. 1724) or an emergency treatment authority (38 U.S.C. 1725 or 1728) care furnished by a State Veterans Home, or urgent care furnished under this authority. A commenter also questioned what does not constitute received health care for purposes of meeting the 24-month eligibility requirement. Any care furnished to a veteran that is not furnished under a provision in chapter 17 of title 38, United States Code, would not satisfy the requirement in section 1725A(b)(2). We are not making any changes based on these comments.

Another commenter was concerned that the proposed rule would exclude veterans who receive care under the Foreign Medical Program because they might not meet the 24-month requirement. The commenter recommended that the rule be amended to specifically state that eligible veterans include those in the Foreign Medical Program. As previously stated the Foreign Medical Program is covered under the 24-month eligibility requirement stated in section 1725A. We are not making any changes based on these comments.

Another commenter stated that it would be nice if urgent care also applies to disabled veteran expatriates. The commenter added that currently even 100 percent disabled veterans not living in the United States covered by the Foreign Medical Program are not truly covered. VA currently does not have contracts in foreign countries. Section 1725A(c) requires that VA have contracts in place to provide the urgent care benefit. Consequently, without such contracts, VA cannot furnish urgent care through the Foreign Medical Program. We are not making any changes based on this comment.

One commenter stated that TRICARE and CHAMPVA require enrollment in Medicare Part B when eligible. The commenter questioned why VA did not require veterans to enroll in Medicare Part B, when eligible, and added that this would help offset the cost of non-VA provided care. Section 1725A of 38 U.S.C. provides that any enrolled veteran who has received care in the last 24-months is eligible for the new urgent care benefit. Section 1725A does not require the veteran to have other health insurance coverage, and we do not believe we have the authority to impose such a requirement under this authority. We are not making any changes based on this comment.

Another commenter stated that all veterans should be given Medicare with the Part B supplemental at no cost to allow veterans to use any private hospital in our nation. Another commenter similarly stated that VA needs to let Medicare take over billing for veterans and not have money assigned to Medicare, VA care, and then payments under contracts for such things as the Veterans Choice Program and the Veterans Community Care Program. VA does not oversee or implement the Medicare program, and

CMS does not have authority to operate programs on VA's behalf. Further these comments are beyond the scope of the proposed rule. We are not making any changes based on this comment.

One commenter suggested that travel not be paid for veterans who use urgent care. Beneficiary travel is regulated under 38 CFR 70.1 through 70.50 and the purpose of the program is to make payments for travel expenses incurred in the United States to help veterans and other persons obtain care or services from VA. Eligible veterans who seek urgent care may also qualify for beneficiary travel if they meet the requirements of § 70.10. We are not making any changes based on this comment.

Another commenter stated that VA needs to increase the rate it pays for beneficiary travel. The commenter also stated that there should be more programs for helping veterans updating their houses. The commenter also stated that they were not able to obtain an emotional support dog. The proposed rule addressed urgent care authorized by 38 U.S.C. 1725A. These concerns are beyond the scope of the proposed rule. We are not making any changes based on these comments.

One commenter stated that more information is needed to evaluate whether or not the new urgent care benefit will improve health care outcomes or inadvertently harm veterans, particularly those who are older and disabled. The commenter further stated that older adults with multiple morbidities are better served in a continuity system and use of disconnected urgent care visits should not be encouraged. Section 1725A authorizes VA to provide urgent care to eligible veterans. The scope of services available under this program, and the range of providers who can furnish this care, will necessarily be limited to some degree, and patient health will be monitored by VA clinical staff to ensure eligible veterans who use this benefit receive continuous, necessary care. We are not making any changes based on this comment.

Another commenter recommended expanding Medicare's definition of urgent care entities and including primary care clinics and emergency room departments with fast-tracks for urgent care needs. In defining qualifying non-VA entities or providers, VA is utilizing the billing codes CMS has developed for walk-in retail health clinics and urgent care centers. To the suggestion that VA include primary care clinics and emergency room departments with fast tracks for urgent care, VA may consider these facilities as qualifying non-VA entities or providers as long as they utilize CMS billing codes 17 or 20. We are not making any changes based on this comment.

Another commenter stated that any walk-in clinic pilot or analysis should include the input of all key stakeholders, including labor representatives of frontline employees who are tasked with providing, arranging, and coordinating care as well as VSOs. The rulemaking process is meant to ensure stakeholders are allowed to provide input for the regulations of this new benefit. VA provided a 30-day comment period for this rulemaking. All interested stakeholders were able to submit a comment. VA notes that it has used caution and has thoroughly reviewed the comments we received. VA will provide educational material on the changes to health care and services under section 1725A. This material will be widely distributed in a variety of formats through an aggressive communications plan with VA's internal and external stakeholders including VA staff and Veteran Service Organizations. We are not making any changes based on this comment.

Another commenter supported the efforts to expand access for veterans to non-VA care facilities for immediate, time-sensitive care and requested that VA take this opportunity to begin the long-delayed coordination with Urban Indian Health Programs (UIHP) to address these needs. The commenter supports the inclusion of section 1725A(c)(1) to clearly define when an eligible veteran can access time-sensitive care and VA's decision to allow such care to be furnished without prior approval from VA. The commenter added that VA has never fully implemented the VA-Indian Health Service Memorandum of Understanding (MoU) for UIHPs. The commenter stated that VA must expeditiously implement this MoU so that UIHPs can be reimbursed for providing culturally competent care (including culturally competent urgent care) to the American Indian and Alaska Native veterans residing in urban areas. The commenter stated that VA should ensure that opportunities and new programs that seek to expand access to care for veterans are inclusive of UIHPs. The MoU for UIHPs is beyond the scope of the proposed rule, which only addresses urgent care authorized under section 1725A.

This commenter was concerned that the proposal to define urgent care to encompass walk-in care will hinder the ability of UIHPs to provide services under this program—again leaving UIHPs out of the equation. The proposal to define urgent care to encompass walk-in care will have no effect if UIHPs can provide the services and qualify to be part of our contracted network. As previously explained, VA is defining urgent care to mean, in general, those services available at facilities that submit claims utilizing the Medicare Place of Service (POS) codes 17 and 20. We welcome UIHPs to apply to be part of the contracted network of care to help meet the needs of veterans. We are not making any changes to the rule based on this comment.

**Comments on the Rulemaking Process**

Several commenters opposed the shortened public comment period, stating that it was a devious and underhanded way to restrict the ability of the public to review and comment and to limit the number of comments received in opposition, as it is obvious this proposal would be greatly opposed. One commenter added that the sole and very obvious purpose of the shortened comments period was to make it appear that not many people actually oppose this new proposal, and thus ensure its adoption. As we explained in the proposed rule, we believe that a 30-day comment period was appropriate because it would allow the Secretary to expedite the commencement of this new benefit, thereby increasing access to health care for eligible veterans. We also note that we received more than 3,000 comments during this 30-day period, and we believe these comments came from a wide cross-section of the public. Therefore, we consider the 30-day comment period adequate and appropriate.

One commenter stated that the proposed rule was too complicated and that the rule should by simplified. VA understands that some veterans may need assistance in understanding how to obtain urgent care. As part of the implementation process of the rule, VA will establish a website that will state the locations of qualifying non-VA entities or providers where eligible veterans may receive urgent care in their community. Veterans may also call their local VA medical facility for additional assistance in obtaining information on urgent care. We are not making any changes based on this comment.

Several commenters made remarks on the proposed rule but did not provide additional information on their comment. In particular, commenters stated that they looked forward to seeing veterans get the care they deserve but provided no additional information. Other commenters opposed the rulemaking but did not explain the basis

for their opposition. Several commenters simply stated that veterans should be honored. Other commenters made non-substantive comments that VA considers inappropriate due to language and content and will not be addressed in this final rule. We are not making any changes based on these comments.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule with the edits described in this rulemaking.

**Effect of Rulemaking**

The Code of Federal Regulations, as revised by this final rulemaking, represents the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this final rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

**Paperwork Reduction Act**

This rulemaking does not contain any provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule does not have a significant economic impact on qualifying non-VA entities or providers. To the extent there is any such impact, it would result in increased business and revenue for them based on voluntary entry into contracts to provide care. We also do not believe there will be a significant economic impact on insurance companies, as claims would only be submitted for care that would otherwise have been received if the veteran had received this care in a primary care visit. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

**Executive Orders 12866, 13563 and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is an economically significant regulatory action under Executive Order 12866. VA's regulatory impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its regulatory impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD. This final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis. VA has determined that the net costs are $34.3 million over a five-year period (FY2019–FY2023) and $6.8 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Congressional Review Act**

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 808(2) to publish this final rule without full, prior Congressional review under 5 U.S.C. 801 and to make the rule effective on June 6, 2019. Specifically, the Secretary finds that it would be contrary to the public interest to delay the date this rule could be operative and effective because any delay in implementing the rule would have a severe and detrimental impact on eligible veterans' health care.

This rule will grant eligible veterans access to urgent and walk-in care from qualifying non-VA entities or providers without prior approval from VA. This rulemaking will implement the mandates of 38 U.S.C. 1725A, as added by section 105 of the VA MISSION Act of 2018, and make it easier for eligible veterans to readily and quickly access health care in their communities.

The VA MISSION Act of 2018 provides that VA may not use the authority granted by section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146; 38 U.S.C. 1701 note, as amended) to furnish care and service after June 6, 2019. And the statute defining and authorizing the new Veterans Community Care Program (38 U.S.C. 1703) will not go into effect until VA promulgates regulations under section 101(c) of the VA MISSION Act of 2018. If VA does not have regulations implementing the new Veterans Community Care Program in place on June 6, 2019, then, the only authority it would have to authorize the vast majority of care in the community would be the existing section 1703. Under this statute, VA could not furnish care as envisioned by section 101 of the VA MISSION Act of 2018. The provisions in the existing section 1703, as well as its implementing regulations, do not provide anywhere near a sufficient legal basis to meet the requirements of the VA MISSION Act of 2018, or the Veterans Choice Program, in areas such as eligibility, appeals, and payment rates. Executing a program inconsistent with both existing section 1703 and its regulations would present significant risks and challenges.

Although a separate rulemaking with distinct eligibility criteria and benefits is published elsewhere in this issue of the **Federal Register**, this rule is integral to the development of VA's comprehensive Veterans Community

Care Program (RIN 2900–AQ46) under 38 U.S.C. 1703, as amended by section 101 of the VA MISSION Act of 2018. Taken together, these rules develop the system of access to health care in the community called for by the VA MISSION Act of 2018. The urgent care benefit will complement the new Veterans Community Care Program because the Veterans Community Care Program provides access to care generally and the urgent care benefit will allow timely access to urgent care to create a comprehensive community care program offering access to multiple levels of necessary care. In this regard, the Veterans Community Care Program requires preauthorization and referral for community care. Under the Veterans Community Care Program, VA technically can send eligible veterans to urgent care facilities, but the referral and scheduling takes time and may not be able to accommodate a same day visit on a weekend. However, the urgent care benefit will allow eligible veterans to go directly to a qualifying non-VA entity or provider to receive same-day treatment for urgent care. Therefore, the urgent care benefit is a necessary component for eligible veterans to be able to access this level of care in a timely manner as part of a comprehensive community care program. The VA MISSION Act of 2018 sets an expectation that the urgent care and traditional, routine care authorized through the Veterans Community Care Program will work together to provide eligible veterans with greater choice and access starting on June 6, 2019.

VA also believes that unacceptable risk to eligible veterans' health and well-being would be created by delaying implementation of the urgent and walk-in benefit. Approximately one third of veterans live in rural or highly rural areas, and access to local, walk-in options in urgent situations prevents care delays and detrimental health outcomes. The urgent and walk-in care benefit is an important part of the statutory scheme that Congress enacted to address this distance barrier (among other barriers to eligible veterans' care), and VA does not wish to impose a burden on veterans by delaying the availability of this care option.

Further, the message that urgent care and traditional, routine care coordinated through the Veterans Community Care Program will work together to provide eligible veterans with greater choice and access beginning on June 6, 2019 has been amplified by stakeholders, including Veterans Service Organizations. VA believes that eligible veterans understand and are relying upon this synergy. Eligible veterans' belief that the two options for care are interconnected is evidenced by the numerous comments VA received on this rulemaking that offered suggestions and recommendations for separate rulemaking describing the general Veterans Community Care Program. Even with a comprehensive communications strategy, delaying urgent care implementation would create a risk of confusion by eligible veterans. Based on the expectation of simultaneous delivery no later than June 6, 2019, set forth in the Act and now amplified, eligible veterans may seek urgent care prior to implementation and face unexpected financial burden from the cost of urgent care visits. For those eligible veterans without insurance, this could result in serious financial hardship. Conversely, eligible veterans who learn of the delay in implementation could postpone care due to the cost and risk potentially serious health complications. Also, urgent care will be provided in locations that are convenient to the veteran, without having to solely rely on VA medical facilities to receive care. Thus, RIN 2900–AQ46 Veterans Community Care Program and RIN 2900–AQ47 Urgent Care must be implemented simultaneously to improve eligible veterans' health care, achieve Congressional objectives, and support comprehensive access to care, and it would be contrary to the public interest to delay the effective date of the final rule to allow for the Congressional review contemplated by the Congressional Review Act.

Accordingly, the Secretary finds it would be contrary to the public interest to delay the effective date of AQ47 and that there is good cause to dispense with the opportunity for a 60-day period of prior Congressional review and to publish this final rule with an operative and effective date of June 6, 2019.

**Administrative Procedure Act**

For the reasons set forth in the preceding section, the Secretary finds that there is good cause under 5 U.S.C. 553(d)(3) to publish this rule with an effective date that is less than 30 days from the date of publication.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.009, Veterans Medical Care Benefits; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; and 64.018, Sharing Specialized Medical Resources.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 10, 2019, for publication.

Dated: May 29, 2019.

**Consuela Benjamin,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons set forth in the preamble, we are amending 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding entries for §§ 17.105, 17.108, and 17.4600 to read in part as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.105 is also issued under 38 U.S.C. 501, 1721, 1722A, 1724, and 1725A.

Section 17.108 is also issued under 38 U.S.C. 501, 1710, 1725A, 1730A, Sec. 101, Pub. L. 113–146, 128 Stat. 1754.

* * * * *

Section 17.4600 is also issued under 38 U.S.C. 1725A.

**§ 17.105 [Amended]**

■ 2. Amend § 17.105 by:

■ a. In paragraph (c), removing ''or 17.111'' and adding in its place ''17.111, or 17.4600''.

■ b. Removing the authority citation at the end of the section.

■ 3. Amend § 17.108 by:

■ a. Revising paragraph (e) introductory text.

■ b. Removing the authority citation at the end of the section.

The revision reads as follows:

**§ 17.108 Copayments for inpatient hospital care and outpatient medical care.**

* * * * *

(e) *Services not subject to copayment requirements for inpatient hospital care, outpatient medical care, or urgent care.* The following are not subject to the copayment requirements under this section or, except for § 17.108(e)(1), (2), (4), (10), and (14), the copayment requirements under § 17.4600.

* * * * *

■ 4. Add § 17.4600 to read as follows:

**§ 17.4600 Urgent care.**

(a) *Purpose.* The purpose of this section is to establish procedures for accessing urgent care. Eligible veterans may obtain urgent care, in accordance with the requirements and processes set forth in this section, from qualifying non-VA entities or providers in VA's network that are identified by VA in accordance with paragraph (c)(2) of this section.

(b) *Definitions.* The following definitions apply to this section.

(1) *Eligible veteran* means a veteran described in 38 U.S.C. 1725A(b).

(2) *Episodic care* means care or services provided in a single visit to an eligible veteran for a particular health condition, or a limited set of particular health conditions, without an ongoing relationship being established between the eligible veteran and qualifying non-VA entities or providers.

(3) *Longitudinal management of conditions* means outpatient care that addresses important disease prevention and treatment goals and is dependent upon bidirectional communications that are ongoing over an extended period of time. For purposes of this section, the term ''longitudinal management of conditions'' and ''longitudinal care'' are synonymous.

(4) *Qualifying non-VA entity or provider* means a non-VA entity or provider, including Federally-qualified health centers as defined in 42 U.S.C. 1396d(l)(2)(B), that has entered into a contract, agreement, or other arrangement with the Secretary to furnish urgent care under this section, or has entered into an agreement with a third-party administrator with whom VA has a contract to furnish such care.

(5) *Urgent care* means services provided by a qualifying non-VA entity or provider, and as further defined in paragraphs (b)(5)(i) through (iv) of this section.

(i) Urgent care includes service available from entities or providers submitting claims for payment as a walk-in retail health clinic (Centers for Medicare and Medicaid Services (CMS) Place of Service code 17) or urgent care facility (CMS Place of Service code 20);

(ii)(A) Except as provided in paragraph (b)(5)(ii)(B) or (b)(5)(iv) of this section, urgent care does not include preventive health services, as defined in section 1701(9) of title 38, United States Code, dental care, or chronic disease management.

(B) Urgent care includes immunization against influenza (flu shots), as well as therapeutic vaccines that are necessary in the course of treatment of an otherwise included service and screenings related to the treatment of symptoms associated with an immediate illness or exposure.

(iii) Urgent care may only be furnished as episodic care for eligible veterans needing immediate non-emergent medical attention, and it does not include longitudinal care. Veterans requiring follow-up care as a result of an urgent care visit under this section must contact VA or their VA-authorized primary care provider to arrange such care.

(iv) If VA determines that the provision of additional services is in the interest of eligible veterans, based upon identified health needs, VA may offer such additional services under this section as VA determines appropriate. Such services may be limited in duration and location. VA will inform the public through a **Federal Register** document, published as soon as practicable, and other communications, as appropriate.

(c) *Procedures.* (1)(i)(A) Eligible veterans may receive urgent care under this section without prior approval from VA.

(B) Eligible veterans must declare at each episode of care if they are using this benefit prior to receiving urgent care under this section.

(2) VA will publish a website providing information on urgent care, including the names, locations, and contact information for qualifying non-VA entities or providers from which urgent care is available under this section.

(3) In general, eligibility under this section does not affect eligibility for hospital care or medical services under the medical benefits package, as defined in § 17.38, or other benefits addressed in this title. Nothing in this section waives the eligibility requirements established in other statutes or regulations.

(4) Urgent care furnished under this section must meet VA's standards for quality established under 38 U.S.C. 1703C, as applicable.

(d) *Copayment.* (1) Except as provided in paragraphs (d)(2) and (3) of this section, an eligible veteran, as a condition for receiving urgent care provided by VA under this section, must agree to pay VA (and is obligated to pay VA) a copayment of $30:

(i) After three visits in a calendar year if such eligible veteran is enrolled under § 17.36(b)(1) through (6), except those veterans described in § 17.36(d)(3)(iii) for all matters not covered by priority category 6.

(ii) If such eligible veteran is enrolled under § 17.36(b)(7) or (8), including veterans described in § 17.36(d)(3)(iii).

(2) An eligible veteran who receives urgent care under paragraph (b)(5)(iv) of this section or urgent care consisting solely of an immunization against influenza (flu shot) is not subject to a copayment under paragraph (d)(1) of this section and such a visit shall not count as a visit for purposes of paragraph (d)(1)(i) of this section.

(3) If an eligible veteran would be required to pay more than one copayment under this section, or a copayment under this section and a copayment under § 17.108 or § 17.111, on the same day, the eligible veteran will only be charged the higher copayment.

(e) *Prescriptions.* Notwithstanding any other provision of this part, VA will:

(1) Pay for prescriptions written by qualifying non-VA entities or providers for eligible veterans, including over-the-counter drugs and medical and surgical supplies, available under the VA national formulary system to cover a course of treatment for urgent care no longer than 14 days.

(2) Fill prescriptions for urgent care written by qualifying non-VA entities or providers for eligible veterans, including over-the-counter drugs and medical and surgical supplies, available under the VA national formulary system.

(3) Pay for prescriptions written by qualifying non-VA entities or providers for eligible veterans that have an immediate need for durable medical equipment and medical devices that are required for urgent conditions (*e.g.,* splints, crutches, manual wheelchairs).

(f) *Payments.* Payments made for urgent care constitute payment in full and shall extinguish the veteran's liability to the qualifying non-VA entity or provider. The qualifying non-VA entity or provider may not impose any additional charge on a veteran or his or her health care insurer for any urgent care service for which payment is made by VA. This section does not abrogate VA's right, under 38 U.S.C. 1729, to recover or collect from a third party the reasonable charges of the care or services provided under this section.

[FR Doc. 2019–11468 Filed 6–4–19; 8:45 am]

BILLING CODE 8320–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R10–OAR–2018–0834: FRL–9994–32–Region 10]**

## Air Plan Approval; AK; Updates to Curtailment Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of revisions to the Alaska State Implementation Plan (SIP) that were submitted by the Alaska Department of Environmental Conservation (ADEC). These revisions update and strengthen ADEC's regulation of residential wood smoke emissions, especially the curtailment program as it applies to the Fairbanks fine particulate matter nonattainment area. No comments were received on this action.

**DATES:** This action is effective on July 5, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0834. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Justin Spenillo at (206) 553–6125, *spenillo.justin@epa.gov,* or Attn: Justin Spenillo, Air and Radiation Division, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

### Table of Contents

I. Background
II. EPA's Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

### I. Background

On November 28, 2018, ADEC submitted revisions to specific air quality regulations for approval into the federally-enforceable Alaska SIP. The submission includes changes to Alaska Administrative Code Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50), adopted December 8, 2017, and state-effective January 11, 2018. This action addresses a portion of the submitted revisions, specifically those that update and strengthen wood smoke curtailment regulations that apply in the Fairbanks North Star Borough fine particulate matter ($PM_{2.5}$) nonattainment area.[1] EPA approved a prior version of Alaska's wood smoke curtailment regulations for the Fairbanks North Star Borough fine particulate matter ($PM_{2.5}$) nonattainment area on September 8, 2017 (82 FR 42457).

On March 22, 2019, we proposed to approve the submitted updates to solid fuel-fired heating device visible emission standards at 18 AAC 50.075(e), and revisions to the Fairbanks Emergency Episode Plan and associated appendix, state-effective January 11, 2018 (84 10750).[2] We intend to take action on the remainder of the submission in a separate, future action.[3] Please see our proposed rulemaking for further explanation and the basis for our approval (84 FR 10750, March 22, 2019). The comment period for our proposed rulemaking closed on April 22, 2019. No comments were received on this action.

### II. EPA's Final Action

The EPA is approving and incorporating by reference the following revised rule into the Alaska SIP at 40 CFR 52.70(c):

- 18 AAC 50.075(e) Solid Fuel-fired Heating Device Visible Emission Standards, state effective January 12, 2018.

The EPA is approving, but not incorporating by reference, the following revised sections of the Alaska State Air Quality Control Plan:

- Volume II, Section III.D.5.11 Fairbanks Emergency Episode Plan, state effective January 12, 2018; and
- Pages 68 through 84 of Volume III, Appendix III.D.5.12: Appendix to Volume II. Analysis of Problems, Control Actions; Section III. Area-wide Pollutant Control Program; D. Particulate Matter; 5. Fairbanks North Star Borough $PM_{2.5}$ Control Plan, state effective January 12, 2018.

As described previously, the EPA is approving these revisions as SIP strengthening. These revisions support the state's ability to reduce and manage emissions in the Fairbanks $PM_{2.5}$ nonattainment area. This action does not alter our prior approval of the plan as meeting Moderate area requirements and we are not making any findings with respect to the Serious plan requirements triggered upon reclassification. As a result of today's final action, violations of any air quality episode called pursuant to 18 AAC 50.075(e) at the levels and conditions specified in Table 1 and Table 2, below, are federally enforceable.

TABLE 1—ADEC'S TABLE 5.11–1 AIR QUALITY EPISODE THRESHOLDS AND EXCEPTIONS

| Episode feature | Stage 1 air alert | Stage 2 air alert |
|---|---|---|
| $PM_{2.5}$ Threshold micrograms per cubic meter, (ug/m$^3$. | 25 | 35. |
| Exceptions During a Power Outage | Yes | Yes. |

[1] See 40 CFR 81.302.

[2] The Fairbanks Emergency Episode Plan is in Volume II: Section III.D.5.11 and is codified as a matter of State law at 18 AAC 50.030(a). The associated appendix to the plan is in Volume III: Appendix III.D.5.12 and includes the Fairbanks North Star Borough Ordinance No. 2017–18 and No. 2017–44, codified as a matter of State law at 18 AAC 50.030(a).

[3] The remainder of the submission addresses revisions to 18 AAC 50.030(b), 18 AAC 50.075(f), 18 AAC 50.077, 18 AAC 50.079, and 18 AAC 50.990.

TABLE 2—ADEC'S TABLE 5.11–2 $PM_{2.5}$ AIR QUALITY EPISODE APPLIANCE-SPECIFIC OR WAIVER-SPECIFIC ACTIONS

| Appliance type or waiver type | Stage 1 air alert | Stage 2 air alert |
|---|---|---|
| No other adequate source of heat (NOASH) designation, meets other requirements in 21.28.060. | Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA). | Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA). |
| Approved Stage 1 Waiver, meets other requirements in 21.28.060. | Operation Prohibited except Borough Listed Solid Fuel Burning Appliances (SFBA). | Operation Prohibited. |
| Wood Stoves | Operation Prohibited | Operation Prohibited. |
| Coal Stoves | Operation Prohibited | Operation Prohibited. |
| Wood-fired hydronic heaters | Operation Prohibited | Operation Prohibited. |
| Wood-fired Furnaces | Operation Prohibited | Operation Prohibited. |
| Coal-fired Hydronic Heaters | Operation Prohibited | Operation Prohibited. |
| Coal-fired Furnaces | Operation Prohibited | Operation Prohibited. |
| Fireplace Inserts | Operation Prohibited | Operation Prohibited. |
| Pellet Fuel Burning Appliances | Operation Prohibited | Operation Prohibited. |
| Masonry Heaters | Operation Prohibited | Operation Prohibited. |
| Cook Stoves | Operation Prohibited | Operation Prohibited. |
| Fireplaces | Operation Prohibited | Operation Prohibited. |
| Waste Oil Burning Appliances | Operation Prohibited | Operation Prohibited. |
| Non-Permitted Outdoor Incinerators, Burn Barrels. | Operation Prohibited | Operation Prohibited. |
| Campfires, Bonfires, Ceremonial Fires, Fire pits | Voluntary Curtailment | Operation Prohibited. |
| Cook Stoves | Operation Prohibited | Operation Prohibited. |

## III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in Section III of this action, and the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

## IV. Statutory and Executive Order Reviews

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

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

The SIP 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 it 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). Therefore, Executive Order 13175 does not apply to this action.

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

[4] *See* 62 FR 27968 (May 22, 1997).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

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

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

Dated: May 15, 2019.

**Chris Hladick,**

*Regional Administrator, Region 10.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart C—Alaska

■ 2. In § 52.70:

■ a. The table in paragraph (c) is amended by revising entry 18 AAC 50.075; and

■ b. The table in paragraph (e) is amended by adding, at the end of the table, an undesignated heading entitled ''Recently-Approved Plans'' and entries ''II.III.D.5.11'' and ''III.III.D.5.12''.

The revision and additions read as follows:

**§ 52.70 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED ALASKA REGULATIONS AND STATUTES

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| **Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50)** | | | | |
| * * | * | * | * | * |
| 18 AAC 50.075 ..... | Solid Fuel-fired Heating Device Visible Emission Standards. | 1/12/2018 | 6/5/2019, [Insert ***Federal Register*** citation]. | Except (d)(2) and (f). |
| * * | * | * | * | * |

* * * * *

(e) * * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| * * | * | * | * | * |
| **Recently—Approved Plans** | | | | |
| II.III.D.5.11 Fairbanks Emergency Episode Plan. | Fairbanks North Star Borough | 11/28/2018 | 6/5/2019, [Insert ***Federal Register*** citation]. | Revision to II.III.D.5. |
| III.III.D.5.12 Appendix to Volume II. Section III.D.5. | Fairbanks North Star Borough | 11/28/2018 | 6/5/2019, ..... [Insert ***Federal Register*** citation]. | Revision to pages 68 through 84 of III.III.D.5. |

[FR Doc. 2019–11620 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 100812345–2142–03]**

**RIN 0648–XH054**

## Snapper-Grouper Fishery of the South Atlantic; 2019 Commercial Accountability Measure and Closure for South Atlantic Yellowtail Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for the commercial sector for yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). NMFS projects that commercial landings of yellowtail snapper will reach the commercial annual catch limit (ACL) for the August 2018 through July 2019 fishing year by June 7, 2019. Therefore, NMFS closes the commercial sector for yellowtail snapper in the South Atlantic EEZ on June 7, 2019, and it will remain closed until August 1, 2019, the start of the August 2019 through July 2020 fishing year. This closure is necessary to protect the South Atlantic yellowtail snapper resource.

**DATES:** This rule is effective at 12:01 a.m., local time, June 7, 2019, until 12:01 a.m., local time, August 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes yellowtail snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The yellowtail snapper commercial ACL is 1,596,510 lb (724,165 kg), round weight, as specified in 50 CFR 622.193(n)(1)(i). The yellowtail snapper fishing year is August 1 through July 31, as specified in 50 CFR 622.7(f). Under 50 CFR 622.193(n)(1)(i), NMFS is required to close the yellowtail snapper commercial sector when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has projected that the yellowtail snapper commercial sector will reach its ACL on June 7, 2019. Therefore, this temporary rule implements an AM to close the yellowtail snapper commercial sector in the South Atlantic EEZ, effective from 12:01 a.m., local time, June 7, 2019, until August 1, 2019, the start of the 2019–2020 fishing year.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having yellowtail snapper on board must have landed and bartered, traded, or sold such species prior to June 7, 2019. During the commercial closure, all sale or purchase of yellowtail snapper from the South Atlantic EEZ is prohibited. The harvest or possession of yellowtail snapper in of from the South Atlantic EEZ is limited to the bag limit specified in 50 CFR 622.187(b)(4) and the possession limits specified in 50 CFR 622.187(c). These bag and possession limits apply on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, regardless of whether such species were harvested in state or Federal waters.

### Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of South Atlantic yellowtail snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(n)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the yellowtail snapper commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because there is a need to immediately implement this action to protect the yellowtail snapper resource, as the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and could result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: May 31, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019–11721 Filed 5–31–19; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 84, No. 108

Wednesday, June 5, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2019–0401; Product Identifier 2019–NM–002–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports of disconnections of certain hinge arms of the bulk cargo door (BCD) due to disbonding of the hinge arm bushes. This proposed AD would require either modifying and re-identifying affected BCDs or replacing affected BCDs, as specified in an European Aviation Safety Agency (EASA) AD. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 22, 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 the material identified in this NPRM that will be incorporated by reference (IBR), contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

### Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:**

### 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–2019–0401; Product Identifier 2019–NM–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0243, dated November 8, 2018; (''EASA AD 2018–0243'') (also referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states:

> BCD hinge arm disconnections have been reported by operators. Hinge arm bushes were found debonded and migrated. Analysis if the affected BCD hinge arms revealed that bonding behaviour is downgraded by application of zinc and nickel surface protection for bushes.
>
> This condition, if not corrected, could lead, in case of ditching, to BCD opening inwards possibly resulting in reduced floatation time.
>
> To address this potential unsafe condition, Airbus developed production mod 111444, introducing two bushes at the BCD hinge arms, to secure the bonded headed bushes in the nominal position, and published the SB [service bulletin] to provide instructions for embodiment in service.
>
> For the reason described above, this [EASA] AD requires modification of the hinge arms of the affected BCD, and re-identification of the affected BCD.

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–2019–0401.

### Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0243 describes procedures for modifying or replacing any affected BCD. EASA AD 2018–0243 also describes procedures for re-identifying or installing a standard identification plate on any modified BCD. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated

all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0243, as incorporated by reference, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0243 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2018–0243, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2018–0243 that is required for compliance with EASA AD 2018–0243 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401 after the FAA final rule is published.

**Costs of Compliance**

We estimate that this proposed AD affects 11 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 |
|---|---|---|---|
| 9 work-hours × $85 per hour = $765 | * $0 | $765 | $8,415 |

* We have received no definitive data on the parts costs for required actions.

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Airbus SAS:** Docket No. FAA–2019–0401; Product Identifier 2019–NM–002–AD.

**(a) Comments Due Date**

We must receive comments by July 22, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 52, Doors.

**(e) Reason**

This AD was prompted by reports of disconnections of certain hinge arms of the bulk cargo door (BCD) due to disbonding of the hinge arm bushes. We are issuing this AD to address disconnected hinge arms which, in a case of ditching, could result in the BCD opening inward and allowing water into the cargo hold, which could result in reduced flotation time.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0243, dated November 8, 2018 (''EASA AD 2018–0243'').

**Note 1 to paragraph (g):** Instructions for re-identification of each affected BCD are provided in Airbus Service Bulletin A350–52–P015, Revision 01, dated November 12, 2018, and paragraph (2) of EASA AD 2018–0243.

**(h) Exceptions to EASA AD 2018–0243**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0243 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0243 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0243 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

**(j) Related Information**

(1) For information about EASA AD 2018–0243, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0243 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0401.

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

Issued in Des Moines, Washington, on April 22, 2019.

**Michael Kaszycki,**

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

[FR Doc. 2019–11613 Filed 6–4–19; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0412; Product Identifier 2018–CE–030–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Piaggio Aero Industries S.p.A. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Piaggio Aero Industries S.p.A. Model P–180 Airplanes. This proposed AD results 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. The MCAI describes the unsafe condition as insufficient sealing of a steering select/bypass valve installed in the nose landing gear (NLG) manifold. The FAA is proposing this AD to require actions that address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by July 22, 2019.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A, Airworthiness Office, Via Pionieri e Aviatori d'Italia snc, 16154 Genova, Italy; phone: +39 010 0998046; email: *airworthiness@piaggioaerospace.it;* and internet: *http://www.piaggioaerospace.it/en/customer-support.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

### 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–2019–0412; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0412; Product Identifier 2018–CE–030–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of

this proposed AD. The FAA will consider all comments received by the closing date and may amend this proposed AD because of those comments.

The FAA will post all comments the received, without change, to *http://regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2017–0229, dated November 21, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for Piaggio Aero Industries S.p.A. Model P–180 airplanes. The MCAI states:

An occurrence was reported of finding insufficient sealing of a Steering Select/Bypass Valve installed on the nose landing gear (NLG) Steering Manifold of a P.180 aeroplane.

This condition, if not detected and corrected, could lead to uncommanded deflection of the NLG wheel, possibly resulting in reduced control of the aeroplane on the ground, with consequent damage to the aeroplane and injury to occupants.

To address this potential unsafe condition, PAI issued Service Bulletin (SB) 80–0325 to provide inspection and rectification instructions.

For the reason described above, this [EASA] AD requires a leak test of the NLG Steering Manifold and, depending on the finding(s), accomplishment of applicable corrective action(s). This [EASA] AD also requires amendment of the applicable Aircraft Flight Manual (AFM).

The MCAI further notes that airplanes with NLG steering manifold part number 72608 installed are known to include manufacturing serial numbers 1001, 3001, 3003, 3004, 3006, 3007, and 3008, and also include airplanes that have incorporated Piaggio Aerospace Service Bulletin No. 80–0425, Revision 0, dated March 30, 2017, and Piaggio Aerospace Service Bulletin No. 80–0454, Revision 0, March 6, 2017. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0412.

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

Piaggio Aero Industries S.p.A. has issued Piaggio Aerospace Service Bulletin No. 80–0325, Revision 0, dated August 10, 2017 (SB 80–0325), and Piaggio Aerospace P.180 AVANTI II/EVO Temporary Change No. 89, dated August 30, 2017 (Temporary Change 89), to the airplane flight manual (AFM). SB 80–0325 describes procedures for doing a NLG steering manifold leakage test. Temporary Change 89 contains emergency operating procedures for the pilot to follow if the NLG steering system fails. 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.

**Other Related Service Information**

The FAA reviewed Piaggio Aerospace Service Bulletin No. 80–0425, Revision 0, dated March 30, 2017 (SB 80–0425); Piaggio Aerospace Service Bulletin No. 80–0454, Revision 0, March 6, 2017 (SB 80–0454); and Temporary Change No. 89 Errata Corrige, dated December 20, 2017 (Temporary Change 89EC). SB 80–0425 and SB 80–0454 both contain procedures for replacing the main landing gear and the NLG steering system on the applicable airplanes. Temporary Change 89EC revises the cover page of Temporary Change 89 to clarify the applicability of the change.

**FAA's Determination and Requirements of the Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

The FAA estimates that this proposed AD will affect 130 products of U.S. registry. The FAA also estimates that it would take about 2.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of the proposed AD on U.S. operators to be $27,625, or $212.50 per product.

If necessary, the FAA estimates that replacing a NLG steering manifold would take about 10 work-hours and require parts costing $50,058, for a cost of $50,908 per product. The FAA has no way of determining the number of products that may need these actions.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

The FAA 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) Will not affect intrastate aviation in Alaska, and

(3) 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):

**Piaggio Aero Industries S.p.A.:** Docket No. FAA–2019–0412; Product Identifier 2018–CE–030–AD.

**(a) Comments Due Date**

The FAA must receive comments by July 22, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Piaggio Aero Industries S.p.A. Model P–180 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 32: Landing Gear.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient sealing of a steering select/bypass valve installed in the nose landing gear (NLG) manifold. The FAA is issuing this AD to detect and correct insufficient sealing of the steering select/bypass valve in the NLG steering manifold, which could lead to un-commanded NLG wheel turns with consequent lateral runway departure.

**(f) Actions and Compliance**

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD.

(1) For airplanes with NLG steering manifold part number (P/N) 72608 installed: (i) Within 50 hours time-in service after the effective date of this AD, do a steering manifold pressure leakage test and, if there is steering actuator movement during the test, replace the NLG steering manifold and repeat the test by following the Accomplishment Instructions, procedure steps (1) through (24), in Piaggio Aerospace Service Bulletin No. 80–0325, Revision 0, dated August 10, 2017.

(ii) If steering actuator movement occurs during procedure step (9) or procedure step (15) of the leakage test required in paragraph (f)(1)(i) of this AD, replacing the NLG steering manifold and repeating the steering manifold pressure leakage test is required before further flight.

(2) For all airplanes, after the effective date of this AD, do not install NLG steering manifold P/N 72608 on any airplane unless it has been inspected as specified in paragraph (f)(1) of this AD and no steering actuator movement occurred.

(3) For all airplanes, within 30 days after the effective date of this AD, revise the airplane flight manual (AFM) by replacing certain pages in the Emergency Procedures section of the AFM by following the Instructions in Piaggio Aerospace P.180 AVANTI II/EVO Temporary Change No. 89, dated August 30, 2017.

**(g) Alternative Methods of Compliance**

The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**(h) Related Information**

Refer to MCAI EASA AD 2017–0229, dated November 21, 2017; Piaggio Aerospace Service Bulletin No. 80–0425, Revision 0, dated March 30, 2017; and Piaggio Aerospace Service Bulletin No. 80–0454, Revision 0, March 6, 2017, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0412. For service information related to this AD, contact Piaggio Aero Industries S.p.A, Airworthiness Office, Via Pionieri e Aviatori d'Italia snc, 16154 Genova, Italy; phone: +39 010 0998046; email: *airworthiness@piaggioaerospace.it.* You may review this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 23, 2019.

**Melvin J. Johnson,**

*Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.*

[FR Doc. 2019–11614 Filed 6–4–19; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2019–0403; Product Identifier 2019–NM–012–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes. This proposed AD was prompted by a test of a new wall partition for a certain cabin attendant seat model that revealed the backrest was permanently deformed and did not allow the seat pan to return to a full-up position; investigation results identified that a heat treatment had not been applied on certain backframes. This proposed AD would require modifying the affected cabin attendant seats, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 22, 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 the material identified in this NPRM that will be incorporated by reference, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For

information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

**Examining the AD Docket**

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

**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–2019–0403; Product Identifier 2019–NM–012–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

**Discussion**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0005, dated January 14, 2019 (''EASA AD 2019–0005'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes. The MCAI states:

> During a test of a new wall partition for cabin attendant seat model 2428, the backrest was found permanently deformed and did not allow the seat pan to return to a full-up position. Investigation results identified that a heat treatment had not been applied on certain backframes, which could lead to permanent deformation of the seat backrest.
>
> This condition, if not corrected, could reduce the escape path through the adjacent exit door in case of evacuation, possibly resulting in injury to aeroplane occupants.
>
> To address this potential unsafe condition, Airbus issued the applicable SB [service bulletin], which refers to Goodrich SB, providing instructions to modify affected parts by replacing the backframe, and to add a placard after modification.
>
> For the reasons described above, this [EASA] AD requires modification of the affected parts.

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

EASA AD 2019–0005 describes procedures for modifying affected cabin attendant seats (which includes an inspection to determine the part number and serial number of the cabin attendant seat) by replacing the backrest and adding a placard. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0005, as incorporated by reference, described previously, except for any differences identified as exceptions in the regulatory text of this AD. This proposed AD also would require sending the inspection results to Airbus SAS.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0005 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0005, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019–0005 that is required for compliance with EASA AD 2019–0005 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403 after the FAA final rule is published.

**Costs of Compliance**

We estimate that this proposed AD affects 19 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 |
|---|---|---|---|
| Up to 462 work-hours × $85 per hour = $39,270 | N/A | Up to $39,270 | Up to $746,130. |

* Table does not include estimated costs for reporting.

We estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the modification results on U.S. operators to be $85 per product.

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

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

result, we have included all known costs in our cost estimate.

## Paperwork Reduction Act

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

## Authority for This Rulemaking

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

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

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus SAS:** Docket No. FAA–2019–0403; Product Identifier 2019–NM–012–AD.

**(a) Comments Due Date**

We must receive comments by July 22, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A320–214 and –271N airplanes and Model A321–211 and –231 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0005, dated January 14, 2019 (''EASA AD 2019–0005'').

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a test of a new wall partition for a certain cabin attendant seat model that revealed the backrest was permanently deformed and did not allow the seat pan to return to a full-up position; investigation results identified that a heat treatment had not been applied on certain backframes. We are issuing this AD to address this condition, which, if not corrected, could reduce the escape path through the adjacent exit door in case of evacuation, possibly resulting in injury to passengers or flightcrew.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0005.

**(h) Exceptions to EASA AD 2019–0005**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0005 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0005 does not apply to this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0005 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated

from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

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

**(j) Related Information**

(1) For information about EASA AD 2019–0005, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0005 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0403.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

Issued in Des Moines, Washington, on May 28, 2019.

**Michael Kaszycki,**

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

[FR Doc. 2019–11621 Filed 6–4–19; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2018–0800; FRL–9994–50–Region 4]**

## Air Plan Approval; KY; Jefferson County Existing and New VOC Storage Vessels Rule Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), through a letter dated March 15, 2018. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County) and make minor ministerial amendments to applicability dates and standards for both existing and new storage vessels for volatile organic compounds (VOC). EPA is proposing to approve the changes because they are consistent with the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before July 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0800 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. What action is EPA proposing?

Through a letter dated March 15, 2018, KDAQ submitted SIP revisions to EPA for approval that include changes to Jefferson County Regulations 6.13 and 7.12.[1] EPA is proposing to approve the changes to Jefferson County Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds,* and Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds.* The SIP revisions update the current SIP-approved versions of Regulation 6.13 (Version 6) and Regulation 7.12 (Version 6) to Version 7 of each. The changes that are being proposed for approval in this rulemaking, and EPA's rationale for proposing approval, are described in more detail below.

### II. EPA's Analysis of the State Submittal

The changes to Jefferson County Air Quality Regulations 6.13 and 7.12 are administrative in nature and will better align the two regulations, reconciling their respective applicability based on the date of a facility's construction, modification, or reconstruction. In the current SIP-approved versions, the regulations' applicability overlaps by approximately four years, with Regulation 6.13 covering facilities built or permitted before September 1, 1976, and Regulation 7.12 covering facilities built or modified on or after April 19, 1972. Jefferson County has changed the date for Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds,* so that it applies to VOC storage vessels that commenced construction, modification, or reconstruction on or before April 19, 1972. The applicability date remains the same in Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds,* but now applies to VOC storage vessels that commenced not only construction or

[1] EPA notes that the Agency received these SIP revisions on March 23, 2018, along with other revisions to the Jefferson County portion of the Kentucky SIP. EPA will be considering action for these other SIP revisions in a separate rulemaking.

modification but also reconstruction after April 19, 1972.

Furthermore, the true vapor pressure standards of 78 millimeters of mercury (mm Hg) (1.5 pounds per square inch absolute (psia)), which are already outlined in Section 3, *Standard for Volatile Organic Compounds* of both Regulation 6.13 and 7.12, have been added to Section 1, *Applicability,* for both regulations.

## III. Why is EPA proposing this action?

The March 15, 2018, SIP revisions that are the subject of this proposed rulemaking address the four-year overlap between the applicability dates of standards for existing and new VOC storage vessels. The SIP revision changes the date in Regulation 6.13 for existing vessels and aligns it with the date in Regulation 7.12 for new vessels. By adding the true vapor pressure value of 78 mm Hg (1.5 psia) to the *Applicability* section of Regulation 6.13 and 7.12, the District is clarifying that Regulations 6.13 and 7.12 apply to VOC storage tanks with respect to which the true vapor pressure of the VOC as stored is equal to or greater than 78 mm Hg (1.5 psia). EPA notes the full regulations, including monitoring requirements, apply as described therein. The regulations will continue to apply to sources with a true vapor pressure of 1.5 psia, as established in Section 3, *Standard for Volatile Organic Compounds,* and a capacity of 250 gallons. As the District has indicated, the monitoring requirements in Sections 5.1 and 5.2 will also continue to apply to sources that, in addition to other features described in Section 5.1, store a liquid having a true vapor pressure greater than 1.0 psia.[2] EPA views these changes as administrative in nature and does not believe that they will result in a change in emissions.

## IV. Incorporation by Reference

In this document, 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, EPA is proposing to incorporate by reference changes to the Louisville Metro Air Pollution Control District portion of the Kentucky SIP at Regulation 6.13, *Standards of Performance for Existing Storage Vessels for Volatile Organic Compounds,* Version 7, and Regulation 7.12, *Standards of Performance for New Storage Vessels for Volatile Organic Compounds,* Version 7, both state effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Jefferson County portion of the Kentucky SIP because the changes are consistent with section 110 of the CAA and will not interfere with the NAAQS or any other applicable requirement of the Act. The changes are administrative in nature and clarify the regulations' applicability.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: May 17, 2019.

**Mary S. Walker,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2019–11757 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2019–0303; FRL–9994–66–Region 4]**

## SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines $NO_X$ Rule Changes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Environmental Protection Agency (EPA) Region 4 (Region 4) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the state of North Carolina, through the North Carolina Division of Air Quality (NC DAQ), in a letter dated June 5, 2017, which changes North Carolina's SIP-approved rule regarding nitrogen oxides ($NO_X$) emissions from large internal

[2] See the Supplemental Letter dated April 3, 2019, located in the docket.

combustion engine sources. In so doing, Region 4 is first considering adopting an alternative policy regarding startup, shutdown, and malfunction (SSM) exemption provisions in SIPs that departs from EPA's 2015 national policy on this subject and, accordingly, if that policy is adopted, is also proposing to withdraw the SIP call issued to North Carolina for exemptions contained in the existing SIP-approved provisions for SSM events.

**DATES:** Comments must be received on or before August 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0303 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Huey can be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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The following topics are discussed in this preamble:

I. Background on SIPs
II. EPA's SSM SIP Policy
III. Alternative Policy Under Consideration on Exemption Provisions in SIPs
IV. Region 4's Evaluation of the North Carolina SIP and Proposal With Respect to the North Carolina SIP Call
V. Region 4's Proposal To Approve North Carolina's June 5, 2017, SIP Revision
A. Summary of North Carolina's June 5, 2017, SIP Revision Changes to Rule .1423
B. Region 4's Analysis of North Carolina's June 5, 2017, SIP Revision Changes to Rule .1423
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VII. Proposed Action
VIII. Statutory and Executive Order Reviews

## I. Background on SIPs

Pursuant to Clean Air Act (CAA or Act) section 110, states adopt and periodically revise SIPs with a goal of attaining and maintaining the national ambient air quality standards (NAAQS).[1] A SIP or SIP revision contains state regulatory or statutory requirements and is submitted by the state to EPA for approval. If EPA determines the SIP submission meets the applicable requirements of the CAA, EPA must approve the submission. Upon EPA's approval of the submission, the SIP provisions that EPA approves become federally enforceable.

Certain events trigger the need for a state to revise or update its SIP. For example, ''infrastructure'' SIP revisions are required after EPA promulgates a new or revised NAAQS. Revisions to the SIP are required after an area is designated or redesignated nonattainment for a NAAQS. A state may be required to revise its SIP after EPA revises its rules to clarify certain requirements of the CAA. A state may also revise its SIP on its own initiative due to revisions to state law or the need to update its regulations. EPA must act on each submitted SIP revision in accordance with applicable CAA requirements.

If EPA determines at any time that a SIP is substantially inadequate to attain or maintain the relevant NAAQS, to mitigate interstate pollutant transport, or to otherwise comply with CAA requirements, EPA will issue a ''SIP call'' pursuant to CAA section 110(k)(5) requiring the state to revise the SIP to address the inadequacy.

In this action, Region 4 is proposing to approve a SIP revision submitted by NC DAQ, through a letter dated June 5, 2017, which seeks to change North Carolina's SIP-approved rule regarding $NO_X$ emissions from large internal combustion engine sources at 15A N.C. Admin. Code 02D .1423. Relevant to this action, in 2015 EPA restated its national policy prohibiting the inclusion of provisions in SIPs that exempt excess emissions during periods of SSM and issued a SIP call to North Carolina to address two specific provisions in the State's implementation plan that provide discretion to the state agency to exempt emissions from being considered a violation of an otherwise applicable appropriate rule, in certain circumstances.[2] Also relevant, the June 5, 2017, SIP submission revises a different provision in the NC code that was not included in the 2015 SSM SIP call but which includes a sub-provision that automatically exempts from regulation periods of startup, shutdown and malfunction, not to exceed 36 consecutive hours, and scheduled maintenance activities.[3] Accordingly, in order to approve the June 5, 2017, SIP revision, Region 4 is first considering adopting an alternative policy with respect to SSM exemption provisions in SIPs. If Region 4 adopts an alternative policy, Region 4 is also proposing to withdraw the SIP call issued to North Carolina based on the alternative policy under consideration regarding SSM exemptions, the rationale for which is discussed in Section III in this document. Region 4's proposed approval of the $NO_X$ emissions SIP revision is described in Section V in this document.

## II. EPA's SSM SIP Policy

In the final SSM SIP Call Action of 2015,[4] EPA updated and restated its national policy regarding provisions in SIPs that exempt periods of SSM events from otherwise applicable emission limitations. Referencing previously issued guidance documents and regulatory actions, the Agency expressed its interpretation of the CAA that SIP provisions cannot include exemptions from emission limitations for emissions during SSM events.[5] EPA's position in the 2015 SSM SIP Call was that the general definitions provision of the CAA providing that an emission limitation must apply to a source ''continuously'' means that an approved SIP cannot include periods during which emissions from sources are legally or functionally exempt from regulation.

In the 2015 SSM SIP Call Action, the Agency defined the term ''automatic exemption'' as a generally applicable SIP provision that does not consider periods of excess emissions as violations of an applicable emission limitation if certain conditions existed during the exceedance period.[6] The Agency defined a ''director's discretion

[1] *See* 40 CFR part 50.

[2] *See* 80 FR 33839, 33964 (June 12, 2015). EPA issued a SIP call regarding provisions 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g).

[3] 15A N.C. Admin. Code 02D .1423 was not included in the 2015 SSM SIP call because, in that action, EPA elected to review the specific provisions identified by Sierra Club in its petition regarding the SSM SIP call. 80 FR at 33880.

[4] *See* 80 FR 33839 (June 12, 2015).

[5] *Id.* at 33976.

[6] *Id.* at 33977.

provision'' as a regulatory provision that authorizes a state regulatory official to grant exemptions or variances from otherwise applicable emission limitations or to otherwise excuse noncompliance with applicable emission limitations, where the regulatory official's determination would be binding on EPA and the public.[7] The Agency defined ''emission limitation'' in the SIP context, relying on the general definition set forth in CAA section 302(k), as a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation.[8] As stated in the 2015 SSM SIP Call Action, the Agency took the position that an emission limitation ''must be applicable to the source continuously, *i.e.,* cannot include periods during which emissions from the source are legally or functionally exempt from regulation.'' [9]

Relying substantially on its interpretation of the general definition of emission limitation in CAA section 302(k)—specifically, that that definition provides that emission limitations must limit emissions of air pollutants ''on a continuous basis''—the Agency explained its position that exemptions from emission limitations in SIPs, whether automatic or discretionary, were not permissible in SIPs.[10] EPA explained that even a brief exemption from an otherwise applicable limit would render the emission limitation non-continuous.[11]

With respect to discretionary exemptions, the Agency took the position that a regulatory official's grant of an exemption pursuant to a ''director's discretion'' exemption could result in air agency personnel modifying a SIP requirement without going through the CAA statutory process for SIP revisions.[12] In the 2015 SSM SIP Call Action, the Agency did allow that some director's discretion exemptions could be included in SIPs, if those exemptions were structured such that variances or deviations from the otherwise applicable emission limitation or SIP requirement were not valid as a matter of federal law unless and until EPA approved the exercise of the director's discretion as a SIP revision.[13]

In the 2015 SSM SIP Call Action, EPA relied on *Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008), as further support for the Agency's position on excluding SSM exemption provisions in SIPs.[14] In *Sierra Club,* the D.C. Circuit evaluated the validity of an SSM exemption in a CAA section 112 rule. Reading CAA sections 112 and 302(k) together, the D.C. Circuit found that ''the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously.'' [15] In 2015, EPA interpreted the 2008 *Sierra Club* decision regarding section 112 requirements and applied the reasoning of that decision to the requirements of CAA section 110, specifically CAA section 110(a)(2)(A), which provides that SIPs shall include ''enforceable *emission limitations* and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' [16] EPA's application of the *Sierra Club* decision to section 110 SIP requirements was based on an understanding that the D.C. Circuit was interpreting the definition of ''emission limitation'' in CAA section 302(k) that applies generally to the Act. Following this reasoning, EPA determined that *Sierra Club* was consistent with the Agency's position, as expressed in previously issued guidance documents and regulatory actions that prohibited exemption provisions for otherwise applicable emission limits in SIPs (such as automatic exemptions granted for startup, shutdown, and malfunction events).

## III. Alternative Policy Under Consideration on Exemption Provisions in SIPs

In reviewing the North Carolina SIP revision at issue, as well as the existing SIP provisions and other SIP revisions pending in the Region, Region 4 is considering the national policy regarding SSM exemptions in SIPs included in the 2015 SSM SIP Call Action, described previously, and is evaluating whether there is a reasonable alternative way to consider SSM provisions in SIPs that allows such exemptions if the SIP considered as a whole is protective of the NAAQS.[17] The compilation of state and federal requirements in the SIP result from the federal-state partnership that is the foundation of the CAA, as well as the various requirements of the Act. Although some SIPs may contain SSM exemptions for limited periods applicable to discrete standards, SIPs are composed of numerous planning requirements that are collectively NAAQS-protective by design. In some cases, these overlapping requirements provide additional protection of the standard that may lead Region 4 to reasonably conclude that the SIP adequately provides for attainment and maintenance of the NAAQS, even if the SIP allows exemptions to specific emissions limits for discrete periods, such as SSM events. Such redundancy helps ensure that the NAAQS are both attained and maintained, a goal of Congress when it created the SIP adoption and approval process.[18] All of these factors could be appropriate to consider when evaluating whether a SIP is adequate to attain and maintain the NAAQS.

As discussed previously, the 2015 SSM SIP Call Action updated and restated EPA's SSM policy that SIPs containing any type of SSM exemptions were not approvable because exemptions from emission limitations created the possibility that a state could not ensure attainment or maintenance of the NAAQS for one or more criteria pollutants. This policy is predicated on the idea that an emission limitation or standard could not apply continuously if the SIP permitted exemptions for any period of time from the emission limitation or standard. Under this policy, the lack of continuous control was viewed as creating a substantial risk that exemptions could permit excess emissions that could ultimately result in a NAAQS violation. However, as will be discussed further in this section, Region 4 is considering whether the general requirements in CAA section 110 to attain and maintain the NAAQS and the

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 33918 (referencing CAA sections 110(k)(3), which establishes the framework for EPA to fully or partially approve SIP submittals, and 110(l) and 193, which specify that revisions to SIPs must be submitted to EPA and can approved only if the Administrator determines that the revisions meet specific requirements, including non-interference with attainment and reasonable further progress and equivalent or greater emission reductions in nonattainment areas). *See also id.* at 33977–78.

[13] *Id.* at 33978.

[14] *See, e.g., id.* at 33852, 33874, 33892–94.

[15] 551 F.3d at 1027–28.

[16] 42 U.S.C. 7410(a)(2)(A) (emphasis added).

[17] The 2015 SSM Action explained that while a SIP may contain provisions that apply during periods of SSM, the applicability of those provisions was not plain on the face of the SIP provision. *See generally* 80 FR at 33943. As explained in this document, EPA Region 4 is considering whether it is reasonable to take a broader perspective of its evaluation of SIPs and provisions that ensure attainment and maintenance of the NAAQS.

[18] *See, e.g.,* H.R. Rep. 91–1783 at 193–95 (1970).

inherent flexibilities of the SIP development process create a framework in which a state may be able to ensure attainment and maintenance of the NAAQS notwithstanding the presence of SSM exemptions in the SIP.

As an initial matter, the D.C. Circuit's decision in *Sierra Club* does not, on its face, apply to SIPs and actions taken under CAA section 110. In the 2015 SSM SIP Call Action at 80 FR 33839, EPA took the position that the legal reasoning of the D.C. Circuit's *Sierra Club* decision applied equally to SSM exemptions contained in CAA section 112 rules and in CAA section 110 approved SIPs and relied on that interpretation to support the Agency's position that SSM exemptions were inconsistent with CAA requirements. At the time, the Agency's interpretation was that CAA section 302(k) applied broadly and required that emission limitations under the CAA be continuous as a general matter. *See* 80 FR at 33874. Further consideration of the facts surrounding the SIP revision submitted by the state of North Carolina has shown that an alternative reading of the application of the *Sierra Club* decision to CAA section 110 is possible and appropriate. Simply stated, while the *Sierra Club* decision did not allow sources to be exempt from complying with CAA section 112 emission limitations during periods of SSM, that finding is not necessarily binding on CAA section 110 and EPA's consideration of SIPs under section 110.

The D.C. Circuit in *Sierra Club* specifically referred to CAA section 112 when it framed Petitioners' argument and found that the Agency ''constructively reopened consideration of the exemption from section 112 emission standards during SSM events.'' [19] The court's analysis reads the definition of emission limitation and standard at CAA section 302(k) in the context of CAA section 112: ''When sections 112 and 302(k) are read together then, Congress has required that there must be continuous section 112-compliant standards.'' [20] Further, specific to CAA section 112 rules, the court explained, ''[i]n requiring that sources regulated under section 112 meet the strictest standards, Congress gave no indication that it intended the application of MACT standards to vary based on different time periods.'' [21] In *Sierra Club,* the court found that when EPA promulgates standards pursuant to CAA section 112, CAA section 112-compliant standards must apply continuously. The stringency of section 112 was thus an important element of the court's decision,[22] and the court did not make any statement explicitly applying its holding beyond CAA section 112.

While EPA chose to rely on the *Sierra Club* decision in the 2015 SSM SIP Call Action, the decision itself does not speak to whether the rationale articulated with respect to SSM exemptions in CAA section 112 rules applies to SIPs approved under CAA section 110. As will be discussed below, there may be a reasonable basis to conclude the *Sierra Club* decision does not need to be extended to section 110. CAA section 112 sets forth a prescriptive standard-setting framework; CAA section 110 does not. CAA sections 112 and 110 have different goals and establish different approaches for EPA implementation. Given the *Sierra Club* decision's singular focus on CAA section 112 standards, and the vastly different purposes and implementation approaches between CAA sections 110 and 112, there may be a reasonable basis for interpreting the decision as only applying to CAA section 112.

CAA section 112 is fundamentally different from CAA section 110(a)(2)(A). Importantly, the court in *Sierra Club* recognized that Congress intended ''that sources regulated under section 112 meet the strictest standards.'' [23] Under CAA section 112, once a source category is listed for regulation pursuant to CAA section 112(c), the statute directs EPA to use a specific and exacting process to establish nationally applicable, category-wide, technology-based emissions standards under section 112(d).[24] Under section 112(d), EPA must establish emission standards for major sources that ''require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section'' that EPA determines is achievable taking into account certain statutory factors. EPA refers to these rules as ''maximum achievable control technology'' or ''MACT'' standards. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources in the category (for which the Administrator has emissions information) or the best performing five sources for source categories with less than 30 sources. *See* CAA section 112(d)(3)(A) and (B). This level of minimum stringency is referred to as the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled existing similar source. *See* CAA section 112(d)(3). EPA also must analyze more stringent ''beyond-the-floor'' control options, which consider not only the maximum degree of reduction in emissions of a hazardous air pollutant (HAP), but must take into account costs, energy, and non-air quality health and environmental impacts when doing so.[25]

In contrast, the CAA sets out a fundamentally different regime with respect to section 110 SIPs, reflecting the principle that SIP development and implementation is customizable for each state's circumstances and relies on the federal-state partnership.[26] The CAA sets forth the minimum requirements to attain, maintain, and enforce air quality standards, while allowing each state to identify and effectuate an approach that is appropriate for the sources and air quality challenges specific to each state.[27] It is important to note that the NAAQS are levels EPA has identified as safe concentrations of particular pollutants and serve as the targets for regional air-quality planning; they are fundamentally different in nature than the source-specific standards EPA issues under section 112. It may not be appropriate to directly translate the D.C. Circuit's concern that the latter standards must apply ''continuously'' to regulate emissions from a particular source to the context of section 110, where a state's plan may contain a broad range of measures, including limits on multiple sources and source categories' emissions of multiple pollutants—all targeted towards attainment and maintenance of a standard that does not itself directly apply to any one source. Importantly, regardless of how a state constructs its SIP, the NAAQS

[19] *Sierra Club,* 551 F.3d at 1026.

[20] *Id.* at 1027.

[21] *Id.* at 1028.

[22] *See id.* at 1027 (''Section 112(d) provides that '[e]missions standards' promulgated thereunder must require MACT standards.'') and 1028 (explaining that Congress intended that ''sources regulated under section 112 meet the strictest standards.'').

[23] *Id.* at 1028.

[24] EPA can also set work practices under CAA section 112(h).

[25] *See Cement Kiln Recycling Coal.* v. *EPA,* 255 F.3d 855, 857–58 (D.C. Cir. 2001).

[26] *See, e.g., Virginia* v. *EPA,* 108 F.3d 1397, 1408 (D.C. Cir. 1997) (''EPA 'identifies the end to be achieved, while the states choose the particular means for realizing that end.'''') (*quoting Air Pollution Control Dist.* v. *EPA,* 739 F.2d 1071, 1074 (D.C. Cir. 1984)). *See also, e.g.,* H.R. Rep. No. 95–294, 95th Cong. 1st Sess. at 213 (explaining that for nonattainment areas, Congress intended to ''give the States more flexibility in determining how to protect public health while still permitting reasonable new growth'') (May 12, 1977).

[27] *See Virginia* v. *EPA,* 108 F.3d at 1408.

themselves are nationally uniform and continuously applicable.

The Fourth Circuit has acknowledged that ''[s]tates are accorded flexibility in determining how their SIPs are structured'' to ensure that the state meets the NAAQS.[28] Further, the U.S. Supreme Court has recognized that the CAA gives a state ''wide discretion'' to formulate its plan pursuant to CAA section 110 and went so far as to say that ''the State has virtually absolute power in allocating emission limitations so long as the national standards are met.'' [29] The U.S. Supreme Court has also explained, ''so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.'' [30] State and federal government divide this responsibility, which results in a balance of state and federal rights and responsibilities. States typically have primary responsibility for determining how and to what extent to regulate sources within the state to comply with NAAQS.[31] In fact, EPA has implemented guidance addressing a number of requirements in CAA section 110 and specifically explained that SIPs could satisfy the requirements of CAA section 110(a)(2)(A) by simply ''identify[ing] existing EPA-approved SIP provisions or new SIP provisions . . . that limit emissions of pollutants relevant to the subject NAAQS.'' [32] Given their understanding of emission sources and air quality within their jurisdiction, states are uniquely suited and often well-equipped to determine how best to implement the NAAQS. Just as the environmental and public health concerns faced by each state vary, so too do the requirements in each state's implementation plan.

The statutory text of CAA section 110(a)(2)(A) reflects this cooperative relationship, providing more flexibility than the text of CAA section 112, as outlined earlier in this section. CAA section 110(a)(2)(A) generally requires that each SIP shall include ''enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.'' [33] EPA has never interpreted this provision to require the type of exacting analysis set forth in CAA section 112, and it may be reasonable for EPA to decide not to apply such an interpretation given the flexibility Congress gave states in section 110. The U.S. Supreme Court has recognized that principles of statutory construction are not so rigid as to necessarily require that the same terminology has the exact same meaning in different parts of the same statute.[34] Terms can have ''different shades of meaning,''reflecting ''different implementation strategies'' even when used in the same statute.[35] Emphasizing that ''[c]ontext counts,'' the Court explained that ''[t]here is . . . no effectively irrebuttable presumption that the same defined term in different provisions of the same statute must be interpreted identically.'' [36] It is reasonable for the distinct purposes of CAA sections 110 and 112 to guide our interpretation of those provisions, the terms used in those provisions and how the statute-wide definition of those terms may be applied in the different context of those two provisions. In other words, the requirement that the ''emissions standards'' that EPA issues under section 112, *see, e.g.,* section 112(c)(2), apply continuously may, as the D.C. Circuit held, prevent EPA from providing SSM exemptions in those standards. However, at the same time, it may be reasonable to interpret the concept of continuous ''emission limitations'' in a SIP to not be focused on implementation of each, individual limit, but rather whether the approved SIP, as a whole, operates continuously to ensure attainment and maintenance of the NAAQS.

In addition, CAA section 110(a)(2)(A) requires that SIPs must ''include enforceable emission limitations and other control measures, means, or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements of this chapter.'' [37] Region 4 is considering whether a state may provide exemptions from emission limits, during which times the emission limit may not apply continuously because the limit is not in effect, so long as the SIP contains a set of emission limitations, control means, or other means or techniques, which, taken as a whole, meet the requirements of attaining and maintaining the NAAQS under Subpart A. A state may be able to demonstrate that a combination of emission limits that apply ''as may be necessary or appropriate'' during normal operations but not during SSM periods and ''other control measures, means, or techniques'' that may exist and remain applicable during periods of SSM in which the exemptions apply—such as general duty provisions in the SIP, work practice standards, best management practices, or alternative emission limits—are protective of the NAAQS. Additionally, SIPs typically include entirely separate provisions, such as minor source and major source new source review provisions regulating construction or modification of stationary sources, that also effectively limit emissions of NAAQS pollutants within the state. Thus, as the U.S. Supreme Court explained in *Duke Energy* that a term may be interpreted differently when used in different parts of the same statute, the CAA definition of an emission limitation in section 302(k), when read in the context of section 110, could mean states may, at their discretion, provide exemptions from specific numerical emission limits during periods when it is not practicable or necessary for such limits to apply, so long as the SIP contains other provisions that remain in effect and ensure the NAAQS are protected. Region 4 is considering whether, in some cases, it may be appropriate to approve SIPs containing such exemption provisions if it is reasonable to conclude that the state's overlapping protective requirements sufficiently ensure overall attainment and maintenance of the NAAQS.

EPA has a statutory duty to approve SIP submissions that meet all applicable CAA requirements. If it is reasonable to conclude that a SIP's approach to exemptions is consistent with the requirement to protect attainment and maintenance of the NAAQS, Region 4 is considering that states may include, and EPA may approve, such exemptions in their implementation plans. In such cases, it is recognized that exemptions from emission limitations may provide flexibility to states as they develop

[28] *North Carolina ex rel. Cooper* v. *TVA,* 615 F.3d 291, 299 (4th Cir. 2010).

[29] *See, e.g., Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 & 267 (1976). *See also id.* at 269 (''Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent.'').

[30] *Train* v. *Natural Res. Def. Council, Inc.,* 421 U.S. 60, 79 (1975).

[31] *See, e.g., Mirant Potomac River, LLC* v. *EPA,* 577 F.3d 223, 227 (4th Cir. 2009) (''Under Title I, states have the primary responsibility for assuring that air quality within their borders meets the NAAQS. Title I requires each state to create a State Implementation Plan . . . to meet the NAAQS.'').

[32] *See* September 13, 2013, Memorandum from Stephen D. Page, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' at page 18.

[33] 42 U.S.C. 7410(a)(2)(A).

[34] *See Envtl. Defense* v. *Duke Energy Corp.,* 549 U.S. 561, 574 (2007).

[35] *Id.* at 574 (citations omitted).

[36] *Id.* at 575–76.

[37] 42 U.S.C. 7410(a)(2)(A) (emphasis added).

robust approaches to air quality protection through a set of planning requirements.

In light of these considerations, there may be instances where automatic exemptions from emission limits for SSM events in a state's implementation plan do not preclude attainment and maintenance of the NAAQS, and thus do not preclude approvability; conversely, if the specific details of an SSM exemptions are such that the Agency cannot reasonably determine that the SIP adequately ensures attainment and maintenance of the NAAQS, the subject SIP revision should not be approved. Any such finding regarding automatic exemptions would require an evaluation of the specific SIP at issue. A finding that automatic exemptions do not interfere with attainment and maintenance of the NAAQS would rely on an evaluation of whether the SIP as a whole contains provisions to ensure that the NAAQS will be sufficiently protected while also providing for exempt periods, and a state could submit information for EPA to evaluate when making such a finding. In addition to reviewing any information provided by the state, EPA can consider other available evidence and provide additional analysis, as necessary, when reviewing SSM emission limitation exemptions in SIPs.

If Region 4 adopts the policy outlined in this section, based on the analysis provided in Section IV below, Region 4 is considering changing the finding from the 2015 SSM SIP Call Action at 80 FR 33840 that certain SIP provisions included in the North Carolina SIP are substantially inadequate to meet CAA requirements. If Region 4 adopts this alternative policy, Region 4 proposes to find that the subject SIP provisions are not inconsistent with CAA requirements.

If adopted, the alternative SSM policy is a policy statement and, thus, would constitute guidance within Region 4. As guidance, this would not bind states, EPA, or other parties, but it would reflect Region 4's interpretation of the CAA requirements. The evaluation of any SIP provision, and that SIP provision's interaction with the SIP as a whole, must be done through notice-and-comment rulemaking.

## IV. Region 4's Evaluation of the North Carolina SIP and Proposal With Respect to the North Carolina SIP Call

North Carolina's SIP contains provisions that provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of the state agency during malfunctions (15A Admin. Code 2D .0535(c)) and during startup and shutdown (15A Admin. Code 2D .0535(g)). In this action, Region 4 is considering adopting an alternative policy regarding SSM exemptions and proposing to find the North Carolina provisions are not substantially inadequate to meet CAA requirements. Therefore, if Region 4 adopts this policy as described previously, Region 4 also proposes to withdraw the SIP call originally issued to North Carolina and published on June 12, 2015.[38] As explained more fully below, after considering the SIP as a whole, Region 4 has identified numerous provisions in the North Carolina SIP intended to assure that air quality standards will be achieved. Any provisions providing exemptions for periods of SSM do not alter the applicability of these general SIP provisions.

On June 12, 2015, EPA found 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g) were substantially inadequate to meet CAA requirements because they provide exemptions during malfunctions and during startup and shutdown, respectively, for emissions exceeding otherwise applicable SIP emissions limitations at the discretion of the state agency. EPA therefore issued a SIP call pursuant to section 110(k)(5) to North Carolina with respect to these provisions. Region 4 is considering these provisions in light of the considerations set forth above and proposes to withdraw the SIP call for North Carolina with respect to these two provisions. As explained, a holistic review of a SIP may show that there are protective provisions that ensure attainment and maintenance of the NAAQS even though a SIP includes SSM exemptions, and we believe that this result is not precluded by the D.C. Circuit decision in *Sierra Club* v. *Johnson.*

In analyzing the air quality protections provided by the entirety of the North Carolina SIP, Region 4 believes there may be a reasonable basis to conclude that the SIP provides numerous overlapping planning requirements that are protective of air quality and each individual criteria pollutant NAAQS. In fact, both of the provisions that were included in the 2015 SSM SIP Call for North Carolina include substantial protection of air quality standards within the SIP-called provision itself.

First, the exemption provided at 2D .0535(g) requires that owners or operators use best available control practices when operating equipment to minimize emissions during start-up and shutdown periods. Specifically, it states:

Start-up and shut-down excess emissions during start-up and shut-down shall be considered a violation of the appropriate rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable when requested to do so by the Director. The Director may specify for a particular source the amount, time, and duration of emissions that are allowed during start-up or shut-down. *The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.* (Emphasis added).

Even though this provision includes an exemption, it also provides a backstop that requires sources to use the best practicable air pollution control practices to minimize the risk that emissions during startup or shutdown periods that could cause an exceedance or violation of the NAAQS.

Second, the exemption provided at 2D .0535(c) outlines seven criteria that the director will consider when evaluating whether the source qualifies for an emissions limit exemption during a malfunction. Specifically, it states:

Any excess emissions that do not occur during start-up or shut down shall be considered a violation of the appropriate rule unless the owner or operator of the source of the excess emissions demonstrates to the director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the director shall consider, along with any other pertinent information, the following:

(1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;

(2) Repairs have been made in an expeditious manner when the emission limits have been exceeded;

(3) The amount and duration of the excess emissions, including any bypass have been minimized to the maximum extent practicable;

(4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(6) The requirements of Paragraph (f) of the Regulation have been met; and

(7) If the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. However, the director shall not excuse excess emissions

[38] *See* 80 FR at 33964.

caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year.

The existence of these specific criteria themselves provide additional protections of the NAAQS because factors considered by the director include whether sources minimize emissions and limit the extent of emissions which could occur to the greatest extent practicable. Additionally, the provision itself establishes bounds on a source's ability to employ this exemption, since it prohibits the director from excusing excess emissions from a source due to malfunctions for more than 15 percent of the operating time. This limitation reasonably minimizes the risk that excess emissions from malfunctions would contribute to a NAAQS exceedance or violation.

Apart from the SIP-called provisions discussed previously, the North Carolina SIP also contains numerous overlapping requirements providing for protection of air quality and the NAAQS, which generally control emissions of NAAQS pollutants. First, 15A N.C. Admin. Code 02D .0502, which is included in the North Carolina SIP and addresses emission control standards generally, provides: ''The purpose of the emission control standards set out in this Section is to establish maximum limits on the rate of emission air contaminants into the atmosphere. All sources shall be provided with the maximum feasible control.'' *See* 40 CFR 52.1770(c)(1). The requirement for ''maximum feasible control'' on all sources applies at all times, including periods of startup and shutdown. Thus, by requiring sources to be subject to emission control standards established at the maximum feasible level of control, the SIP ensures that air quality in the State will be protected to the highest degree possible. This guiding purpose broadly applies to the emission control standards in Section .0500 of the North Carolina SIP. North Carolina confirmed as much in their comment letter on EPA's 2015 SSM policy, explaining that the State's requirement that sources implement ''maximum feasible control'' is one of the provisions of the SIP that ''provide assurances that air quality and emission standards will be achieved.'' In light of the flexibility in CAA section 110(a)(2)(A) and SIP development generally, we think it is reasonable for North Carolina to develop an overall emissions control approach that requires all sources to implement maximum feasible controls even though sources may be exempt from particular, otherwise applicable emission standards during some smaller subset of SSM periods.

Second, the North Carolina SIP includes general provisions that require sources not to operate in such a way as to cause NAAQS violations. 15A N.C. Admin. Code 02D .0501(e) directs all sources to operate in a manner that does not cause any ambient air quality standard to be exceeded at any point beyond the premises on which the source is located, despite the SIP containing SSM exemptions for emission limitations. 15A N.C. Admin. Code 2D. 0501(e) states:

> In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

Accordingly, even if the SIP contains exemptions from specific emission limits during SSM events, this provision ensures that the source at issue must ensure that none of its emissions cause a NAAQS exceedance or violation.

Third, the North Carolina SIP provides additional assurances that sources will prevent and correct equipment failures that could result in excess emissions by requiring utility boilers (and any source with a history of excess emissions, as determined by the director) to have a malfunction abatement plan approved by the director. Utility boilers in North Carolina contribute to a significant portion of the point source pollutant emissions in the State.[39] 15A N.C. Admin. Code 02D .0535(d) states:

> All electric utility boiler units subject to a rule in this section shall have a malfunction abatement plan approved by the director. In addition, the director may require any source that he has determined to have a history of excess emissions to have a malfunction abatement plan approved by the director. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. . . .

The provision also identifies minimum requirements for a malfunction abatement plan. Although specific to electric utility boilers (and other sources as required by the Director), this SIP provision ensures that subject units are taking steps to prevent, detect, and correct malfunctions, even if an SSM exemption applies. This provision serves to limit any excess emissions that could result from such events, thus limiting the chance that excess emissions would result in a NAAQS exceedance or violation.

Fourth, the North Carolina SIP provides general provisions to reduce airborne pollutants and to prevent NAAQS exceedances beyond facility property lines, despite the SIP containing SSM exemptions for emission limitations, for particulates from sand, gravel, or crushed stone operations (at 15A N.C. Admin. Code 2D .0510(a)) and from lightweight aggregate operations (at .0511(a)):

> The owner or operator of a [. . .] operation shall not cause, allow, or permit any material to be produced, handled, transported or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for particulate matter, both $PM_{10}$ and total suspended particulates.

And in a similar manner, the North Carolina SIP includes general provisions to reduce airborne pollutants and to prevent NAAQS exceedances beyond facility property lines for particulates from wood products finishing plants (at 15A N.C. Admin. Code 2D .0512):

> A person shall not cause, allow, or permit particulate matter caused by the working, sanding, or finishing of wood to be discharged from any stack, vent, or building into the atmosphere without providing, as a minimum for its collection, adequate duct work and properly designed collectors, or such other devices as approved by the commission, and in no case shall the ambient air quality standards be exceeded beyond the property line.

Accordingly, even if the SIP contains exemptions from specific emission limits during SSM events, these provisions ensure that the source at issue must ensure that none of its emissions cause a NAAQS exceedance or violation.

Fifth, the North Carolina SIP provides a general requirement at 15A N.C. Admin. Code 2D .0521(g) for sources that operate COMS that ''[i]n no instance shall excess [opacity] emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR part 60, 61, or 63 or any ambient air quality

[39] For example, utility boilers in North Carolina contribute approximately 24 percent of $PM_{10}$ emissions, 66 percent of $SO_2$ emissions, and 47 percent of $NO_X$ emissions from total point sources in the State. *See* spreadsheet titled ''NC 2014 NEI Summary'' in the docket for this action.

standard in Section 15A N.C. Admin. Code 2D.0400 or 40 CFR part 50.'' Each of these provisions ensures that emissions are minimized to protect air quality, independent of an SSM exemption that may also apply. Further, as recognized by this provision, federal standards in 40 CFR parts 60, 61, and 63 applicable to the source apply and regulate sources emissions and operation, regardless of any SSM exemption in the SIP.

Finally, we note that the SIP includes an overall strategy for bringing all areas into compliance with the NAAQS for all pollutants regulated by the CAA. On September 26, 2011 (76 FR 59250), Region 4 approved into the SIP significant $NO_X$ and $SO_2$ emission limitations from the North Carolina Clean Smokestacks Act (NCCSA). This state law became effective in 2007 and set caps on $NO_X$ and $SO_2$ emissions from public utilities operating coal-fired power plants in the State that cannot be met by purchasing emissions credits. *See* 40 CFR 52.1781(h). The NCCSA resulted in permanent emission reductions that helped nonattainment areas in the State achieve attainment of the 1997 Annual $PM_{2.5}$ NAAQS.[40] Thus, even if a source could avail itself of an SSM exemption for certain emissions, its total emissions must fit within the utility-wide cap for the State provided under a law adopted as part of a comprehensive plan for improving air quality in North Carolina.

In addition to the general SSM exemption issues discussed previously, in the 2015 SSM SIP Call Action, EPA also raised concerns that North Carolina's 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g) are examples of what EPA referred to as ''director's discretion'' exemptions. These SIP provisions identify between five and seven criteria that the Director of North Carolina Department of Environmental Quality will evaluate to determine whether excess emissions resulting from a malfunction or startup and shutdown, respectively, are a violation of the given standard. In the 2015 SSM SIP Call Action, EPA took the position that these director's discretion provisions were also problematic because they allow air agency personnel to modify existing SIP requirements under certain conditions, which essentially constituted a variance from an otherwise applicable emission limitation. EPA considered director's discretion provisions to effectively permit impermissible SIP revisions by allowing air agency personnel to make unilateral decisions on an *ad hoc* basis regarding excess emissions during SSM events and, thus, as not in compliance with the necessary process required for SIP revisions.[41]

Acknowledging those concerns, we now consider finding that director's discretion SSM exemptions may not necessarily make a SIP substantially inadequate to meet CAA requirements.[42] As explained, *supra* in section III, in certain circumstances, Region 4 is considering adopting a policy that automatic exemptions during periods of SSM may not be inherently inconsistent with CAA section 110(a)(2)(A). Because automatic SSM exemptions may not necessarily render the SIP inadequate, Region 4 is considering also finding that director's discretion exemptions also may not necessarily render the SIP inadequate. Further, consistent with the perspective being evaluated by Region 4 that SIPs can generally protect against NAAQS violations and that SIP provisions containing SSM exemptions may not be inconsistent with CAA requirements, Region 4 has reviewed EPA's 2015 interpretation and is considering that director's discretion provisions may not constitute an improper SIP revision. If a director's discretion provision establishes a framework for when and how an air agency director may determine that SSM excess emissions do not constitute a violation, and that framework was approved into the SIP after going through a public process, any action by the director consistent with the provision would simply be acting in accordance with the SIP-approved provisions; it would not be an unlawful revision of the SIP.

Given the specific criteria contained within them, director's discretion provisions would likely excuse emissions in more limited circumstances than automatic exemptions. Accordingly, the same reasoning that supports our potential position that automatic exemptions in SIPs may not be inconsistent with the CAA also informs our potential position that the director's discretion provisions in the North Carolina SIP that were SIP-called in the 2015 SSM SIP Call may not be inconsistent with the CAA. This potential finding would be predicated on a holistic finding that included consideration of all of the provisions in the North Carolina SIP. Relevant to this evaluation, as discussed previously, the North Carolina SIP includes provisions that provide for sources to be operated in a manner that does not cause an exceedance or violation of the NAAQS, and that requirement is not displaced by this director's discretion exemption. The North Carolina director's discretion provisions outline the conditions under which air agency personnel can make a factual decision that SSM emissions do not constitute a violation, and that limitation is part of Region 4's holistic consideration of the SIP. The SIP, as approved, provides air agency personnel with the framework and authority to exempt excess emissions from being a violation. Because that allowance is approved into the SIP, and the SIP provisions went through a public comment period prior to EPA's final action to approve the SIP, Region 4 is evaluating whether acting in accordance with these approved provisions would not constitute unlawful SIP revisions.

As part of the 2015 SSM SIP Call Action, EPA issued CAA section 110(k)(5) SIP calls to a number of states, including North Carolina regarding provisions 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g).[43] In the 2015 SSM SIP Call Action, the Agency explained that it would evaluate any pending SIP submission or previously approved submission through notice-and-comment rulemaking and, as part of that action, determine whether a given SIP provision is consistent with CAA requirements and applicable regulations.[44] Proposed re-evaluations on those issues are part of this notice-and-comment action.

As discussed, the North Carolina SIP contains numerous provisions that work in concert and provide redundancy to protect against a NAAQS exceedance or violation, even if an SSM exemption provision also applies. Therefore, based on an analysis of the multiple provisions contained in the North Carolina SIP that are designed to be protective of the NAAQS, Region 4 proposes to conclude that it is reasonable for the North Carolina air agency director to be able to exclude qualifying periods of excess emissions

[40] *See Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment; Proposed Rule,* 76 FR 58210,58217 (September 20, 2011), and *Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Greensboro-Winston Salem-High Point 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment; Proposed Rule,* 76 FR 59345,59352 (September 26, 2011).

[41] *See* 80 FR at 33977 and 33978.

[42] *See Texas* v. *EPA,* 690 F.3d 670 (5th Cir. 2012); *Luminant Generation Co.* v. *EPA,* 675 F.3d 917 (5th Cir. 2012) (vacating and remanding EPA's disapproval of discretionary SIP provisions).

[43] *See* 80 FR at 33964.

[44] *Id.* at 33976.

during periods of SSM without posing a significant risk to attainment or maintenance of the NAAQS. Consistent with the alternative policy being considered, set forth above, Region 4 has reviewed the applicability of the SIP call previously issued to North Carolina, including EPA's specific evaluation of the State's subject SIP, and, if that policy is adopted, proposes to withdraw the SIP call that was issued in the 2015 SSM SIP action with respect to 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g).

EPA's CAA regulations allow EPA Regions to take actions that interpret the CAA in a manner inconsistent with national policy when the Region seeks and obtains concurrence from the relevant EPA Headquarters office. Pursuant to EPA's regional consistency regulations at 40 CFR 56.5(b), the Acting Region 4 Regional Administrator sought and obtained concurrence from the relevant office in EPA's Office of Air and Radiation to propose an action that outlines an alternative policy that is inconsistent with the national EPA policy, most recently articulated in the 2015 SSM SIP Action, on provisions exempting emissions exceeding otherwise applicable SIP limitations during periods of unit startup, shutdown and malfunction at the discretion of the state agency and propose action consistent with that alternative policy. The concurrence request memorandum is included in the public docket for this action.

## V. Region 4's Proposal To Approve North Carolina's June 5, 2017, SIP Revision

On September 18, 2001, North Carolina submitted a new rule section regarding the control of $NO_X$ emissions from large stationary combustion sources to Region 4 for approval into its SIP.[45] The rule section—15A N.C. Admin. Code 02D .1400—contains Rule .1423 (''Large Internal Combustion Engines'') as well as other rules not related to today's proposed action. On August 14, 2002, North Carolina submitted to Region 4 a SIP revision with changes to its Section 1400 $NO_X$ rules, including several changes to Rule .1423. Region 4 did not act on the August 14, 2002, submittal. However, on December 27, 2002, Region 4 approved the portion of North Carolina's September 18, 2001, SIP revision incorporating Rule .1423. *See* 67 FR 78987.

On June 5, 2017, North Carolina withdrew its August 14, 2002, SIP revision and resubmitted identical changes to Rule .1423 as a SIP revision as well as the changes to the other rules contained in the original 2002 SIP revision.[46] [47] The State provided this resubmission in response to a Region 4 request for a version of the rule that highlights, using redline-strikethrough text, the State's proposed revisions to the federally approved rule. The June 5, 2017, SIP revision relies on the hearing record associated with the August 14, 2002, SIP revision [48] because the revised rule text is the same.

### *A. Summary of North Carolina's June 5, 2017, SIP Revision Changes to Rule .1423*

As mentioned previously, North Carolina's June 5, 2017, SIP revision includes several changes to Rule .1423. These changes relate to the rule paragraphs on Applicability, Emission limitation, Adjustment, Compliance determination and monitoring, Reporting requirements, and Recordkeeping requirements, as described below.

- Rule .1423(a), ''Applicability.'' North Carolina modified Rule .1423(a) by clarifying that Rule .1423 does not apply to an internal combustion (IC) engine of the four specific types listed in the rule if it is subject to prevention of significant deterioration (PSD) or nonattainment new source review (NNSR).
- Rule .1423(b), ''Emission limitation.'' North Carolina corrected Rule .1423(b) by stating that the owner or operator of a stationary IC engine ''shall *not* cause'' $NO_X$ emissions in excess of the rule limits instead of ''shall cause'' $NO_X$ emissions in excess of those limits.
- Rule .1423(c), ''Adjustment.'' North Carolina corrected Rule .1423(c) by changing the word ''Paragraphs'' to ''Paragraph.''
- Rule .1423(d), ''Compliance determination and monitoring.'' North Carolina modified subparagraph (1) of Rule .1423(d) (Rule .1423(d)(1)) and subparagraph (2) of Rule .1423(d) (Rule .1423(d)(2)) as follows:

—Rule .1423(d)(1) is revised to add that data obtained from a continuous emissions monitoring system (CEMS) and used to determine compliance with this rule must meet the applicable requirements specified in ''.1404 of this Section'' as well as the applicable part 60 requirements.

—Rule .1423(d)(2) is revised to change the conditions in which an owner or operator of a subject IC engine may use an alternative compliance determination method. Rather than being based on the State finding that the procedure can ''measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph,'' the revised language reads ''show the compliance status of the engine.''

- Rule .1423(e), ''Reporting requirements.'' North Carolina modified Rule .1423(e) by adding the missing word ''shall'' to clarify that the owner or operator of a subject source must submit $NO_X$ emission reports and by revising the language to clarify that the ozone season ends September 30 of each year.
- Rule .1423(f), ''Recordkeeping requirements.'' North Carolina modified Rule .1423(f)(7)(A) to clarify that, when $NO_X$ standards are exceeded by a unit equipped with a CEMS, records must be kept that identify the reason for the ''excess emissions,'' the action taken to correct the ''excess emissions,'' and the action taken to prevent similar future ''excess emissions'' from occurring.

### *B. Region 4's Analysis of North Carolina's June 5, 2017, SIP Revision Changes to Rule .1423*

Region 4 has reviewed North Carolina's changes to Rule .1423, ''Large Internal Combustion Engines,'' in the State's June 5, 2017, SIP revision and is proposing to approve these changes as discussed below.

- Rule .1423(a), ''Applicability.'' Rule .1423(a) states that Rule .1423 applies to four listed types of IC engines that are subject to Rule .1418 (''New Electric Generating Units, Large Boilers, and Large I/C Engines'') and that were permitted after October 30, 2000. North Carolina's June 5, 2017, revision modifies Rule .1423(a) to clarify that Rule .1423 applies to those IC engines which are ''not subject to Rule .0530 (prevention of significant deterioration) or Rule .0531 (nonattainment area major new source review).'' This revision reflects the current language of Rule .1418, which requires that IC engines subject to PSD/NNSR must, in most cases, comply with those SIP provisions

[45] See Rule .1402—''Applicability'' and the definition of ''source'' in Rule .1401 for the scope of this rule section.

[46] Region 4 is considering the other rule changes through a separate rulemaking.

[47] On June 28, 2018, North Carolina supplemented its June 5, 2017, submittal to acknowledge that Rules .1413 and .1414 are not in the SIP. This supplement is not relevant to this action.

[48] North Carolina held public hearings on May 21, 2001, and June 5, 2001, to accept comments on the rule changes contained in the August 14, 2002, SIP revision.

rather than the requirements of Rule .1423.[49]

• Rule .1423(b), ''Emission limitations.'' North Carolina corrected Rule .1423(b) by stating that the owner or operator of a stationary IC engine ''shall *not* cause'' (rather than ''shall cause'') $NO_X$ emissions in excess of the specified $NO_X$ limits. This change corrects a typographical error and is consistent with applicable requirements of the CAA and its implementing regulations.

• Rule .1423(c), ''Adjustment.'' North Carolina corrected Rule .1423(c) by changing the word ''Paragraphs'' to ''Paragraph.'' This change corrects a typographical error and is consistent with applicable requirements of the CAA and its implementing regulations.

• Rule .1423(d)(1), ''Compliance determination and monitoring.'' North Carolina modified Rule .1423(d)(1) to ensure that CEMS data used for determination of compliance with this rule meet applicable SIP requirements as well as Federal requirements. Rule .1423(d)(1) of the State's current federally approved SIP provides that the owner or operator of a subject IC engine shall determine compliance using ''a [CEMS] which meets the applicable requirements of Appendices B and F of 40 CFR part 60, excluding data obtained during periods specified in Paragraph (g) of this Rule.'' The rule revision inserts ''and .1404 of this Section'' following the word ''Rule'' in this text to ensure that the CEMS used to obtain compliance data must meet the applicable requirements specified in Rule .1404 (in particular, Paragraphs (d)(2) and (f)(2) of Rule .1404) as well as the applicable part 60 requirements since those provisions specify additional federal requirements for obtaining CEMS data. In a letter dated February 22, 2019 (included in the docket for this proposed rulemaking), NC DAQ stated:

> The DAQ's intention in 15A N.C. Admin. Code 02D .1423(D)(1) is to cross-reference 15A N.C. Admin. Code 02D .1404, *Recordkeeping: Reporting: Monitoring:,* Paragraphs (d)(2) and (f)(2) since these provisions specify additional federal requirements for continuous emissions monitoring systems. The DAQ does not interpret the new cross-reference to 15A N.C. Admin. Code 02D .1404 to be part of the preceding exclusionary language.

Paragraph (g) of Rule .1423 provides that the emission standards therein do not apply during periods of ''(1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; (2) regularly scheduled maintenance activities.'' As discussed in Section IV in this document, Region 4 proposes to find that the provisions of Rule .1423(g), when considered in conjunction with other elements in the North Carolina SIP, are sufficient to provide adequate protection of the NAAQS. North Carolina has bounded the time during which a source can employ this exemption, minimizing the potential that any excess emissions during these periods would cause or contribute to a NAAQS exceedance or violation. Therefore, the exemption, which allows for emission standards of the rule to not apply during periods of startup, shutdown, and malfunction of up to 36 consecutive hours, or maintenance, is not inconsistent with the requirements of the CAA section 110.

• Rule .1423(d)(2), ''Compliance determination and monitoring.'' North Carolina modified Rule .1423(d)(2) to standardize the existing exclusions with those of other rules of the approved SIP. Rule .1423(d)(2) of the State's current federally approved SIP provides, as an alternative to CEMS, that a source may determine compliance using ''an alternate calculat[ion] and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.'' The current rule qualifies this option as follows:

> To use the alternative procedures under Subparagraph (2) of this Paragraph, the owner or operator shall demonstrate to the Director that the alternative procedure can measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph. The installation, implementation, and use of this alternate procedure shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph.

The rule revision deletes the first sentence of this qualification language and revises the condition of the third sentence to provide that the Director may approve the alternative procedure if he finds that it can ''show the compliance status of the engine'' (rather than a finding that the alternative procedure can ''measure emissions of nitrogen oxides as accurately and precisely as the continuous emission monitoring system required under Subparagraph (1) of this Paragraph''). Region 4 notes that this language revision is consistent with language already approved in the SIP at Rule .1409(e) for certain internal combustion engines.

• Rule .1423(e), ''Reporting requirements.'' North Carolina modified Rule .1423(e) by adding the missing word ''shall'' to clarify that owner or operator of a subject source must submit $NO_X$ emission reports and by revising language to clarify that the ozone season ends September 30 of each year. These changes are needed to correct a typographical error and to add clarity to the existing provision.

• Rule .1423(f), ''Recordkeeping requirements.'' North Carolina modified subparagraph (7)(A) of Rule .1423(f) by replacing the word ''exceedance'' with ''excess emissions'' in three instances. The change clarifies that, when $NO_X$ standards are exceeded by a unit equipped with a CEMS, records must be kept that identify the reason for the ''excess emissions,'' the action taken to correct the ''excess emissions,'' and the action taken to prevent similar future ''excess emissions'' from occurring. This change provides clarification to the regulated community since ''excess emissions'' is defined in the State's rules on $NO_X$ emissions, under Rule .1401 (''Definitions''), and ''exceedance'' is not.

Region 4 is proposing, if the policy outlined *supra* in section III is adopted, to determine that these changes to the North Carolina SIP are consistent with CAA requirements.

## VI. Incorporation by Reference

In this document, Region 4 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, Region 4 is proposing to incorporate by reference the North Carolina regulation 15 N.C. Admin. Code 02D .1423—''Large Internal Combustion Engines,'' modified to clarify applicability, correct typos, standardize exclusions, clarify that alternative compliance methods must show compliance status of the engine, clarify by adding the word ''shall'' and revising language to better define ozone season, and clarify that CEMS records must identify the reason for, the action taken to correct, and the action taken to prevent excess emissions, state effective on July 15, 2002.

[49] Rule .1418 establishes $NO_X$ emission limits for, among other types of units, new large internal combustion engines permitted after October 31, 2000. This rule provides that a new large internal combustion engine must comply with Rule .1423 if it is not covered under Rule .0530 (PSD) or .0531 (NNSR). This rule also stipulates that if a new large internal combustion engine is covered under Rule .0530 (PSD), it shall comply with the Rule .1423 requirements or the best available control technology requirements of .0530 (PSD), whichever requires the greater degree of reduction.

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VII. Proposed Action

Region 4 is proposing to withdraw the SIP call issued to North Carolina for 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g) pursuant to CAA section 110(k)(5), originally published on June 12, 2015. In connection with this proposed withdrawal, Region 4 proposes to find that these state regulatory provisions included in the North Carolina SIP are not substantially inadequate to meet CAA requirements.

Pursuant to section 110 of the CAA, Region 4 is proposing to approve the aforementioned changes to Rule .1423 and incorporate these changes into the North Carolina SIP. Region 4 has evaluated the changes to Rule .1423 as included in North Carolina's June 5, 2017, SIP revision, and is proposing to determine that they meet the applicable requirements of the CAA and its implementing regulations.

## VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. 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 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 CAA; and
- Results from on a new interpretation and does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: May 20, 2019.

**Mary S. Walker,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2019–11758 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R10–OAR–2018–0823, FRL–9994–48–Region 10]**

## Air Plan Approval; AK: Interstate Transport Requirements for the 2015 Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On October 25, 2018, the State of Alaska made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA is proposing to approve the Alaska SIP as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Comments must be received on or before July 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0823, at *https://www.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 electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, EPA Region 10, Air and

Radiation Division, 1200 Sixth Avenue, Seattle, WA 98101, at (206) 553–6357 or *hall.kristin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

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## I. Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the Clean Air Act (CAA) requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called ''prongs'' within CAA section 110(a)(2)(D)(i): Section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or that will interfere with maintenance of the NAAQS in another state (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems.[3]

*Regional Regulatory Actions*

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport for purposes of the 1997 ozone NAAQS (as well as the 1997 and 2006 fine particulate matter standards) and the Cross-State Air Pollution Rule Update, which addressed interstate transport for purposes of the 2008 ozone NAAQS (CSAPR Update).[4] CSAPR and the CSAPR Update did not address interstate transport for the 2015 ozone NAAQS and also made no specific findings with respect to Alaska. Alaska is not part of the contiguous United States and is not fully contained within the 12 kilometer (km) eastern modeling domain established to inform CSAPR and the CSAPR Update. The 12 km eastern modeling domain identified the Western United States (the West) as the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern United States (the East) was identified as the 37 states east of the 11 western states.

*Four-Step Framework*

The EPA, working in partnership with states to develop and implement CSAPR, the CSAPR Update, and previous regional rulemakings pursuant to the good neighbor provision,[5] developed the following four-step framework to address the requirements of the good neighbor provision for the ozone NAAQS:[6] (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

*Data To Assist States*

To assist states, the EPA released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS, and we describe those documents in the following sections. However, none of these documents consider ozone precursor emissions to or from Alaska, and none project design values at monitoring sites located in Alaska, nor apportion specific downwind impacts to Alaska. Nonetheless, we have included all background information to provide a complete accounting of the EPA's data releases.

*2017 Data Release and Memorandum*

On January 6, 2017, the EPA published a notice of data availability (NODA) for preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.[7] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for ozone nonattainment areas classified as Moderate.[8] On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[9] Although the 2017 memorandum also released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS.

*2018 Data Release and Memoranda*

On March 27, 2018, we issued a memorandum (March 2018

[1] See National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

[3] See North Carolina v. EPA, 531 F.3d 896, 909–911 (2008).

[4] See 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[5] Other regional rulemakings addressing ozone transport include the $NO_X$ SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[6] The four-step framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the western United States. See, *e.g.,* 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

[7] See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[8] 82 FR 1735 (January 6, 2017).

[9] See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework). The March 2018 memorandum included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) as part of efforts to develop good neighbor SIPs for the 2015 ozone NAAQS.[10] The EPA subsequently issued two more memoranda in August and October of 2018, providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the four-step framework.[11]

*March 2018 Memorandum*

The March 2018 memorandum describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways. First, the EPA followed its past approach[12] of using model predictions from the 3 x 3 array of grid cells surrounding the location of all monitoring sites (referred to as the ''3 x 3'' approach). Second, the EPA followed a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with current measured values[13] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with maximum design values exceeding the NAAQS. This included sites with current measured values below the NAAQS with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed state-level ozone source-apportionment modeling for the 48 contiguous United States and the District of Columbia to estimate the expected impact from each state to each nonattainment and maintenance receptor.[14] The EPA included contribution information resulting from the source-apportionment modeling in attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of 1 percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not exceed the 1 percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact exceeded the 1 percent threshold, the state's emissions were further evaluated in step three, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

*August and October 2018 Memoranda*

As noted previously, on August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing information concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the 1 percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 part per billion (ppb) threshold is generally comparable, overall, to the amount captured using a threshold equivalent to 1 percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the 1 percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good

[10] See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action and at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[11] See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action and at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[12] See March 2018 memorandum, p. 4.

[13] The EPA used 2016 ozone design values, based on 2014 through 2016 measured data, which were the most current data at the time of the analysis. See attachment B of the March 2018 memorandum, p. B–1.

[14] As discussed in the March 2018 memorandum, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

neighbor provision for the 2015 ozone NAAQS.[15] In addition, on October 19, 2018, the EPA issued a memorandum presenting information that states may consider as they evaluate the status of monitoring sites that the EPA identified as potential maintenance receptors.

While the March 2018 memorandum presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

## II. State Submission

On October 25, 2018, the Alaska Department of Environmental Conservation (ADEC) made a submission addressing the requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2015 ozone NAAQS.[16] The submission provides information supporting the state's conclusion that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The submission focuses on the amount and sources of ozone precursor emissions in the state, trends in monitored ambient ozone levels, meteorological conditions, the distance from Alaska to the nearest receptors in other states, and the intervening geography that isolates Alaska from other states.

The submission states that aggregate anthropogenic ozone precursor emissions (nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs)) from Alaska sources are very small compared to emissions of ozone precursors on a nationwide basis. Specifically, Alaska evaluated 2014 National Emissions Inventory data and determined that anthropogenic $NO_X$ emissions from sources in Alaska make up one percent of the national total anthropogenic $NO_X$ emissions inventoried. In doing the same comparison for VOCs, Alaska determined that anthropogenic emissions from Alaska sources make up less than one-half percent of total anthropogenic VOC emissions nationwide.

Alaska also included information on monitored ozone levels within the state. ADEC has historically monitored ozone at numerous sites in and around Anchorage and Fairbanks, the two most-populated areas. The submission states that the single highest 8-hour ozone concentration in Alaska was recorded at 0.057 ppm on May 11, 2014 at the Fairbanks National Core (NCORE) site, which is still well below the 2015 ozone standard of 0.070 ppm. The most recent locations for ozone monitoring in Alaska are the Fairbanks National Core site and the Palmer site in the Anchorage area, both of which have 2015 through 2017 design values less than 85 percent of the 2015 ozone NAAQS.[17] The 2015 through 2017 design value at the Fairbanks NCore site is 0.043 ppm and the 2015 through 2017 design value at the Palmer site is 0.044 ppm. The submission asserts that ambient ozone measured in Alaska consistently trends very low.

The submission highlights the geographic isolation of the State of Alaska. Alaska borders no other state in the United States and the intervening geography between Alaska and any other state is significant. The southernmost Alaskan border is geographically separated from the nearest state, Washington, by hundreds of miles of mountainous terrain in British Columbia, Canada. The submission also describes meteorological factors that influence potential interstate transport from Alaska sources. In the summer months, regional, predominant low-pressure wind patterns emanate from the Gulf of Alaska in the west and travel inland towards the east, circulating in a counterclockwise direction. The submission states these predominant low-pressure wind patterns would not generally be expected to transport air pollutants from Alaska south to the contiguous United States.

Alaska's submission points generally to SIP-approved regulations that implement the 2015 ozone NAAQS. The submission highlights Alaska's SIP-approved stationary source preconstruction permitting program set forth in Articles 3 and 5 of Alaska Administrative Code Title 18, Environmental Conservation, Chapter 50, Air Quality Control (18 AAC 50). Alaska's preconstruction permitting program is designed to control future potential $NO_X$ and VOC emissions from major and minor stationary sources in the state. The submission also notes other SIP-approved rules that serve to limit $NO_X$ and VOCs, including incinerator emission standards, emission limits for industrial processes, and emission limits for fuel burning equipment.

## III. EPA Evaluation

We have employed the four-step interstate transport framework to evaluate whether the Alaska SIP meets the requirements of the good neighbor provision for the 2015 ozone NAAQS. At step 1, we refer to the EPA's March 2018 memorandum to identify downwind air quality problems. This memo lists receptors at specific monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with 2014 through 2016 measured design values exceeding the NAAQS that also have projected average 2023 design values that exceed the NAAQS. The EPA identified maintenance receptors as those monitoring sites with maximum projected 2023 design values exceeding the NAAQS. This includes sites with 2014 through 2016 measured design values below the NAAQS with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. Receptors identified by the EPA are in the states of Arizona, California, Colorado, Connecticut, Maryland, Michigan, New York, Texas, and Wisconsin.[18]

While the EPA's March 2018 memorandum helps to identify potential downwind receptors in step 1, it does not inform whether Alaska is sufficiently linked to those receptors, as is required in step 2 of the EPA's four-step framework. The EPA did not include Alaska in the state-level ozone source-apportionment modeling that estimated the expected impact from each state to each nonattainment and maintenance receptor.[19]

In the absence of such modeling and state level source apportionment data at step 2, we have used a ''weight of

[15] See August 2018 memorandum, p. 4.

[16] Alaska's October 25, 2018 submission addresses all CAA sections 110(a)(1) and (2) infrastructure requirements for the 2015 ozone NAAQS (including interstate transport prongs 1 and 2) and includes regulatory updates and permitting rule revisions for approval into the SIP. This action addresses the portion of the submission related to interstate transport prongs 1 and 2. We intend to address the remainder of the submission in separate, future actions.

[17] Design values below 85 percent of the NAAQS are a factor in determining the EPA's minimum ozone monitoring requirements in 40 CFR part 58, Appendix D.

[18] See March 2018 memorandum, attachment B.

[19] See March 2018 memorandum, attachment C.

evidence'' approach to evaluate factors that together help determine whether Alaska emissions are sufficiently linked to potential nonattainment or maintenance receptors in other states. The factors evaluated for purposes of this proposed action include emissions inventory data, monitoring trends, geography, meteorology, and SIP-approved provisions that limit current and future emissions of ozone precursors, as described in the following paragraphs.

*Emissions Inventory Data*

According to the most recent, publicly-available census data, Alaska's population is less than a million people (737,438).[20] Stationary and mobile source emissions are related, in part, to an area's population. As stated in the submission, and confirmed by 2014 National Emissions Inventory data, Alaska's stationary and mobile source emissions of $NO_X$ and VOCs as precursors to ozone formation comprise a very small fraction of emissions nationwide, totaling just one percent and one-half percent, respectively.[21] Compared to other states in the northwest, Alaska's $NO_X$ emissions are in the middle of the range, while Alaska's VOC emissions are low.

TABLE 1—2014 NEI STATIONARY AND MOBILE SOURCE $NO_X$ AND VOC EMISSIONS

[Tons][22]

| Pollutant | Nationwide | Alaska | Idaho | Oregon | Washington |
|---|---|---|---|---|---|
| $NO_X$ | 12,233,224 | 127,194 | 81,135 | 125,626 | 234,050 |
| VOCs | 12,388,288 | 63,408 | 86,332 | 134,431 | 241,561 |

*Monitoring Trends*

In addition to emissions inventory data, we have evaluated historic ozone monitoring data within Alaska. ADEC has monitored ozone in Anchorage and Fairbanks over the last 10 years. The National Park Service also monitors for ozone at Denali National Park.[23] Minimum monitoring requirements for ozone are established in 40 CFR part 58, Appendix D, and make use of population data and design value history to determine the minimum number of ozone monitors that are required in areas of each state.[24] The following table shows ozone design values calculated from 2010 to the present. All are well below the 2015 ozone NAAQS (0.070 ppm).

TABLE 2—ALASKA OZONE DESIGN VALUE TRENDS

[ppm][25]

| Site ID | Location | 2010–2012 | 2011–2013 | 2012–2014 | 2013–2015 | 2014–2016 | 2015–2017 |
|---|---|---|---|---|---|---|---|
| 020200018 | Anchorage, Garden | 0.045 | ..... | ..... | ..... | ..... | ..... |
| 020680003 | Denali National Park | 0.052 | 0.052 | 0.053 | 0.054 | 0.053 | 0.050 |
| 020900034 | Fairbanks, NCORE | ..... | ..... | 0.046 | 0.045 | 0.041 | 0.043 |
| 021700012 | Anchorage, Palmer | ..... | ..... | ..... | ..... | ..... | 0.044 |

*Geography and Meteorology*

Another factor for consideration is that Alaska is geographically vast and isolated from any other state in the United States. Alaska is over 586,000 square miles in area and shares no borders with other states.[26] Alaska is bordered to the east by the Yukon Territory and British Columbia, Canada. To the south is the Gulf of Alaska and the Pacific Ocean. To the west is the Bering Sea, Bering Strait, and Chukchi Sea. The Arctic Ocean lies to the north. Alaska is distant from the nonattainment and maintenance receptors identified in the EPA's March 2018 memorandum. The closest identified nonattainment receptor is in Sacramento, California (Site ID 60675003) and the closest identified maintenance receptor is also in Sacramento (Site ID 60670012). California is over 1000 miles from Alaska's southernmost border and the intervening topography in Alaska and British Columbia, Canada are varied and includes mountainous and complex terrain.[27] Geographically situated between Alaska and California are the states of Washington and Oregon. Each intervening state has equivalent or higher ozone precursor emissions compared to Alaska,[28] and each has been determined by the EPA to contribute less than 1 percent to identified receptors in any other state, including California.[29]

Meteorology is also a factor that can limit potential transport of emissions from Alaska to identified receptors. According to Alaska's submission and the 2015 Alaska Air Quality Monitoring Network Assessment, weather in Alaska during the summer months is influenced by the jet stream and low-pressure systems that tend to move weather patterns from south-central Alaska up into the Interior, not south to the contiguous United States.[30] The summer months are when ozone levels are generally higher, and that holds true

[20] United States Census Bureau population estimate for Alaska, July 1, 2018, published at: *https://www.census.gov/quickfacts/fact/table/ak,US/PST045218.*

[21] ''Biogenic sources'' and ''Fire sources'' are not included. See EPA 2014 National Emissions Inventory Report, published at *https://gispub.epa.gov/neireport/2014/.*

[22] Ibid.

[23] Clean Air Status and Trends Network (CASTNET).

[24] 40 CFR part 58, Appendix D, Network Design Criteria for Ambient Air Quality Monitoring, Table D–2. The 2018 Alaska monitoring network plan was approved by the EPA on October 19, 2018. The EPA approval letter is in the docket for this action.

[25] EPA 2017 Ozone Design Value Report, Table 6, Monitor Trends, *https://www.epa.gov/air-trends/air-quality-design-values.*

[26] 2015Alaska Air Quality Monitoring Network Assessment, p. 8, published at *http://dec.alaska.gov/air/air-monitoring/network-assessments.*

[27] Ibid, p. 10.

[28] See ''Table 1: 2014 NEI Stationary and Mobile Source $NO_X$ and VOC Emissions (tons)'' in the preceding paragraph.

[29] Washington and Oregon's modeled contribution to the Sacramento nonattainment receptor (Site ID 60675003) is 0.14 ppb and 0.45 ppb, respectively. Washington and Oregon's modeled contribution to the Sacramento maintenance receptor (Site ID 60670012) is 0.20 ppb and 0.57 ppb, respectively. See March 2018 memorandum, attachment C.

[30] Ibid, p. 23.

at the Sacramento, California nonattainment and maintenance receptors, which are those EPA-identified receptors closest to Alaska, discussed in the previous paragraph.[31]

*Alaska SIP*

It is helpful to review a state's existing SIP-approved regulations as part of a weight of evidence analysis. Therefore, we have evaluated the current federally-approved Alaska SIP and those rules in the SIP that are designed to limit emissions of $NO_X$ and VOCs from existing and future sources. Alaska generally regulates emissions of $NO_X$ and VOCs through its SIP-approved stationary source preconstruction permitting programs, set forth in Articles 3 and 5 of 18 AAC 50, in addition to other regulations approved into the SIP and described in this section. Stationary source preconstruction permitting is known as new source review (NSR) and establishes requirements based on a source's size and location, among other things. New and modified major stationary sources located in designated nonattainment areas are subject to nonattainment NSR permitting requirements (NNSR) for the nonattainment pollutant. New and modified major stationary sources in designated attainment and unclassifiable areas are subject to prevention of significant deterioration permitting requirements (PSD). Alaska's SIP approved NNSR and PSD programs are found in Article 3 of 18 AAC 50. Minor new and modified stationary sources are regulated by Alaska's SIP-approved minor NSR program found in Article 5 of 18 AAC 50.

All of Alaska is designated ''attainment/unclassifiable'' for the 2015 ozone NAAQS.[32] Therefore, with respect to ozone precursor emissions, stationary sources seeking to construct or modify in Alaska are subject to PSD and minor NSR, depending on the size of the source. The Alaska PSD permitting program in Article 3 of 18 AAC 50 references a suite of regulations approved into the Alaska SIP and makes use of certain federal PSD requirements, set forth in the Code of Federal Regulations (CFR), and incorporated by reference into the Alaska SIP in 18 AAC 50.040. See 40 CFR 52.96. The EPA most recently approved updates and revisions to the Alaska PSD permitting program on August 28, 2017 (82 FR 40712). The current SIP-approved Alaska PSD permitting program incorporates by reference specific federal requirements in 40 CFR 52.21, 40 CFR 51.166, and 40 CFR part 51, Appendix W, as of July 1, 2017. The program has been updated for the 2015 ozone NAAQS and regulates $NO_X$ and VOCs as precursors to ozone formation, consistent with the EPA's implementing regulations at 40 CFR 51.166.

Turning to minor sources, Article 5 of 18 AAC 50 requires pre-construction permitting for subject new and modified minor stationary sources. SIP-approved minor NSR programs and revisions to such programs must be consistent with the EPA's implementing regulations at 40 CFR 51.160 through 51.164. Alaska's minor NSR program was originally approved into the Alaska SIP on July 5, 1983 (48 FR 30623). We have approved subsequent revisions, most recently on August 28, 2017 (82 FR 40712). Both Alaska's PSD and minor NSR programs are designed to limit potential future emissions of $NO_X$ and VOCs.

In addition to permitting requirements, Alaska's SIP contains other rules that also serve to limit $NO_X$ and VOCs. These rules include incinerator emission standards (18 AAC 50.050) and emission limits for industrial processes and fuel burning equipment (18 AAC 50.055).

Based on the factors evaluated and discussed in this proposal and supporting material in the docket for this action, the EPA believes it is reasonable to conclude that emissions from Alaska are not likely to be linked to nonattainment and maintenance receptors in the contiguous United States. We propose to find that Alaska's SIP contains adequate provisions that are designed to limit future potential $NO_X$ and VOC emissions, and therefore, the state is unlikely to be linked to downwind receptors in the future. Accordingly, we have stopped our evaluation at step 2 of the four-step framework.

## IV. Proposed Action

As discussed in section II in this preamble, Alaska concluded that emissions from sources in the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The EPA's evaluation, discussed in section III in this preamble, confirms this finding. We are proposing to approve the Alaska SIP as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS.

## 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 CAA 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 CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[31] The high ozone season is May through October in the Sacramento area. Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress plan, Chapter 1, page 1–1, which can be found at *http://www.airquality.org/businesses/air-quality-plans/federal-planning.*

[32] 40 CFR 81.302.

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

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

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

Dated: May 21, 2019.

**Chris Hladick,**

*Regional Administrator, Region 10.*

[FR Doc. 2019–11764 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2019–0315; FRL–9994–57–Region 7]**

## Air Plan Approval; Missouri; Compliance Monitoring Usage

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on February 15, 2019. The submission revises a Missouri regulation that establishes alternate monitoring methods for certifying compliance and alternate methods to establish whether a violation has occurred at a source. Specifically, the revisions to the rule: Clarify that there are no definitions specific to the rule; add language clarifying the date of an incorporation by reference (IBR) and where the public can get a copy of the IBR; add a state rule to the list of state rules that presumptively identify credible testing, monitoring, or information gathering methods; and make other minor edits. These revisions are administrative in nature and do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally-approved rules.

**DATES:** Comments must be received on or before July 5, 2019.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0315 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7016; email address casburn.tracey@epa.gov.

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

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II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
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### I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2019–0315, at *https://www.regulations.gov.* 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, 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.*

### II. What is being addressed in this document?

The EPA is proposing to approve revisions to the Missouri SIP received on February 15, 2019. The revisions are to a state rule at Title 10, Division 10 of the Code of State Regulations, 10 CSR 10–6.280 *Compliance Monitoring Usage,* which establishes alternate compliance certification methods for monitoring requirements.

The revisions are administrative in nature and do not impact air quality. The EPA's analysis of the revisions can be found in the technical support document (TSD) included in this docket.

### III. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. The state received and one comment; the comment was from the EPA and was a general comment regarding SIP revisions. No changes were made to the proposed rule text in response to the EPA's comment. The SIP revision submission meets the substantive requirements of the CAA, including section 110 and implementing regulations.

### IV. What action is EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–6.280 *Compliance Monitoring Usage.* Approval of these revisions will ensure consistency between state and federally-approved rules. The EPA has determined that these changes will not adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on the action. Final rulemaking will occur after consideration of any comments.

### V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA

Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act (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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where 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, Alternate compliance certification methods, Incorporation by reference.

Dated: May 28, 2019.

**James Gulliford,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.280'' to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * | * | * | * | * |
| **Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri** | | | | |
| * | * | * | * | * |
| 10–6.280 ..... | Compliance Monitoring Usage. | 2/28/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | |
| * | * | * | * | * |

* * * * *

[FR Doc. 2019–11546 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R08–OAR–2019–0063; FRL–9994–54–Region 8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the state of Utah on March 27, 2014, and August 7, 2018. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to the issuance of Utah air quality permits for major sources in nonattainment areas. The intended effect of this proposed action is to bring Utah's nonattainment new source review (NNSR) permitting program in line with federal requirements. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

**DATES:** Written comments must be received on or before July 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0063, 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 and Radiation Division, 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 Quality Planning Brnach, EPA, Region 8, Mailcode 8ARD–QP, 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

*NNSR Programs Generally*

CAA section 110(a)(2)(C) requires each SIP to include ''a program to provide for regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter,'' and CAA section 172(c)(5) provides that the SIP ''shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].'' CAA section 173 lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program.

Section 51.165 in title 40 of the CFR (Permit Requirements) sets out the minimum plan requirements for the NNSR permitting program. Generally, 40 CFR 51.165 consists of a set of definitions, minimum plan requirements regarding procedures for determining applicability of NNSR and use of offsets, and minimum plan requirements regarding other source obligations, such as recordkeeping.

Specifically, subparagraphs 51.165(a)(1)(i) through (xlvi) enumerate a set of definitions which states must either use or replace with definitions that a state demonstrates are more stringent or at least as stringent in all respects. Subparagraph 51.165(a)(2) sets minimum plan requirements for procedures to determine the applicability of the NNSR program to new and modified sources. Subparagraph 51.165(a)(3), (a)(9) and (a)(11) set minimum plan requirements for the use of offsets by sources subject to NNSR requirements. Subparagraphs (a)(8) and (a)(10) regard precursors, and subparagraphs (a)(6) and (a)(7) regard recordkeeping obligations. Subparagraph 51.165(a)(4) allows NNSR programs to treat fugitive emissions in certain ways. Subparagraph 51.165(a)(5) regards enforceable procedures that apply after approval to construct has been granted. Subparagraph 51.165(b) sets minimum plan requirements for new major stationary sources and major modifications in attainment and unclassifiable areas that would cause or contribute to violations of the national ambient air quality standards (NAAQS.) Finally, subparagraph 51.165(f) sets minimum plan requirements for the use of Plant-wide Applicability Limits.

On May 16, 2008, the EPA finalized regulations to implement the prevention of significant deterioration (PSD) and NNSR permitting programs for fine particulate matter ($PM_{2.5}$). 73 FR 28321. Among other things, the 2008 $PM_{2.5}$ NSR implementation rule created presumptions for NNSR permitting of $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas: Nitrogen oxides ($NO_X$) were presumed to be a precursor that had to be addressed in the permitting program, while volatile organic compounds (VOC) and ammonia were presumed to not be precursors. Sulfur dioxide ($SO_2$) was a required precursor in all cases.

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a decision that remanded the 2008 $PM_{2.5}$ NSR Implementation Rule. The court found that the EPA erred in implementing the $PM_{2.5}$ NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of $PM_{10}$ precursors (and hence under the court decision, $PM_{2.5}$ precursors) ''except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area.'' Accordingly, nonattainment NSR

programs that are submitted for $PM_{2.5}$ nonattainment areas must regulate all $PM_{2.5}$ precursors, *i.e.,* $SO_2$, $NO_X$, VOC, and ammonia, unless the Administrator determines that such sources of a particular precursor do not contribute significantly to nonattainment in the nonattainment area.

The EPA finalized a new provision at 40 CFR 51.165(a)(13) that codifies this requirement, as it applies to $PM_{2.5}$, in the federal regulations. The $PM_{2.5}$ SIP Requirements Rule, 81 FR 58010 (Aug. 24, 2016), describes three optional approaches for demonstrating that a particular precursor is not a significant contributor to ambient $PM_{2.5}$ levels that exceed the standard in a particular nonattainment area. These three precursor demonstrations are: (a) Comprehensive precursor demonstration; (b) major stationary source precursor demonstration; and (c) NNSR precursor demonstration. If a state chooses to submit a precursor demonstration, it must do so in accordance with provisions in the final rule. A state may use this type of demonstration to justify that sources of the given precursor may be excluded from certain $PM_{2.5}$ attainment plan requirements and/or NNSR requirements, although the particular sources and requirements eligible for exclusion will depend on the type of demonstration submitted. Section III.C of the preamble to the $PM_{2.5}$ implementation rule also outlines certain technical issues, such as the appropriate geographic scope of a precursor demonstration, recommended significance thresholds, and recommended analytical approaches for evaluating precursor contributions to ambient $PM_{2.5}$ levels and the sensitivity of $PM_{2.5}$ levels in an area to decreases or increases of emissions. Subsequently, on November 16, 2016, the EPA issued a draft guidance memorandum for $PM_{2.5}$ precursor demonstrations.[1]

*Utah's NNSR Program*

On May 10, 2001, the EPA sent Utah a letter outlining concerns with Utah's nonattainment permitting rules, which are codified in UAC R307–403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas).[2] On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah submitted revisions to their nonattainment permitting regulations, specifically to address the EPA-identified concerns regarding their nonattainment permitting regulations. These revisions addressed R307–403–1 (Purpose and Definitions), R307–403–2 (Applicability), R307–403–11 (Actual Plant-wide Applicability Limits (PALs)), and R307–420 (Ozone Offset Requirements in Davis and Salt Lake Counties). The August 20, 2013 submittal also added VOC as a $PM_{2.5}$ precursor to the NNSR program; however, the submittal did not establish a significant emissions rate (SER) for VOC to determine when a modification at an existing major source would be a major modification subject to NNSR review. On March 27, 2014, Utah submitted a revision to address the omission and establish the VOC SER.

As a result of the 2013 *NRDC* v. *EPA* decision and the 2016 $PM_{2.5}$ SIP Requirements Rule, including the new provision at 40 CFR 51.165(a)(13), as well as our review of the August 20, 2013 submittal, it became clear that Utah needed to submit further revisions to address remaining deficiencies in the nonattainment permitting program in order for the EPA to fully approve the August 20, 2013 submittal. Among those deficiencies was the lack of an analysis demonstrating that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State. On September 30, 2016 Utah submitted to EPA a letter committing to address the remaining deficiencies in the State's nonattainment permitting program in R307–403 that were not addressed in the August 20, 2013 submittal, including revisions to R307–403–2, R307–403–3, and R307–403–4. Specifically, Utah committed:

1. To either regulate ammonia as a $PM_{2.5}$ precursors in the NNSR program or demonstrate that sources of ammonia do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the state, consistent with new provisions at 40 CFR 51.1006(a)(3);
2. To revise R307–403–3, including R307–403–3(3), to remove the reference to NNSR determinations being made ''at the time of the source's proposed start-up date'';
3. To revise R307–403–3, including R307–403–3(2) and R307–403–3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;
4. To revise R307–403–3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307–403–1, to explicitly state that it applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas;
5. To revise R307–403–4 to incorporate the requirements from 40 CFR 51.165 that establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;
6. To revise R307–403–4 to reference the criteria discussed in section IV.D. of 40 CFR 51, Appendix S; and
7. To update R307–403 to include a new section that imposes requirements that address emission offsets for $PM_{2.5}$ nonattainment areas (as required in 40 CFR 51.165(a)(11)) on NNSR sources in Utah. Utah will revise R307–403–3, including R307–403–3(3)(c), to cross reference this new section, as well as the requirements in R307–403–4, R307–403–5, and R307–403–6; and Utah commits to work with the Utah Air Quality Board to revise this section to include the requirements of CAA Section 173(c)(1) and 40 CFR 51.165 (specifically 40 CFR 51.165(a)(3)) concerning the requirement that creditable reductions be calculated based on actual emissions for offset purposes.

Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Based on the September 30, 2016 commitment letter, on February 3, 2017 (82 FR 918), the EPA conditionally approved Utah's August 20, 2013 submittal. For details of our analysis of the deficiencies and Utah's commitment letter, please see the October 31, 2016 notice for our proposed conditional approval. 81 FR 75361.

## II. Proposed Action

*March 27, 2014 Submittal*

The EPA is proposing to fully approve Utah's revisions submitted on March 27, 2014. Utah submitted a revision to their definition of ''significant'' in R307–403–1(4)(b), which established a SER for VOC at 40 tons per year (tpy) in $PM_{2.5}$ nonattainment areas. This SER is used

[1] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, ''Draft $PM_{2.5}$ Precursor Demonstration Guidance'' (Nov. 17, 2016). This memorandum is available in the docket for this rulemaking.

[2] This letter is available in the docket for this rulemaking.

to determine whether a modification at a major source is to be considered major. This revision is consistent with the federal definition of ''significant'' in 40 CFR 51.165(a)(1)(x) and we therefore propose to approve it.

*August 7, 2018 Submittal*

The EPA is proposing to fully approve Utah's revisions submitted on August 7, 2018. The EPA proposes that these changes are consistent with the CAA and EPA regulations for NNSR programs in 40 CFR 51.165. Please refer to a cross-walk table in the docket for this action which outlines how Utah's nonattainment permitting rules correlate with the requirements of 40 CFR 51.165.

Specifically, the August 7, 2018 submittal revises R307–101–2 (Definitions); R307–403–1 (Purpose and Definitions); R307–403–2 (Applicability); R307–403–3 (Review of Major Sources of Air Quality Impact); R307–403–4 (Offsets: General Requirements); R307–403–5 (Offsets: Particulate Matter Nonattainment Areas); R307–403–7 (Offsets: Baseline) and R307–403–9 (Construction in Stages). The submittal also provides a technical demonstration for exempting ammonia as a $PM_{2.5}$ precursor in the Logan, UT–ID $PM_{2.5}$ nonattainment area and a technical basis for setting an ammonia SER of 70 tpy in the Salt Lake City and Provo $PM_{2.5}$ nonattainment areas. If the EPA finalizes a full approval of Utah's August 7, 2018 submittal, the conditional nature of the August 20, 2013 submittal would, at that time, become fully approved.

Specifically, we are proposing to approve:

R307–101–2 (Definitions) and Logan Precursor Demonstration

The August 7, 2018 submittal revised the definition of ''$PM_{2.5}$ precursor'' in R307–101–2. Previously the definition stated that $SO_2$, $NO_X$, and VOCs were $PM_{2.5}$ precursors. The revised definition states that $SO_2$, $NO_X$, VOCs, and ammonia are precursors in all $PM_{2.5}$ nonattainment areas except where a demonstration satisfying 40 CFR 51.1006(a)(3) (*i.e.,* a NNSR precursor demonstration) has, for a particular area, determined otherwise. We note that 51.1006(a)(3)(ii) requires EPA approval before the exemption applies. The revision also specifically exempts ammonia as a $PM_{2.5}$ precursor for NNSR purposes in the Logan, UT–ID nonattainment area.

In accordance with 40 CFR 51.1006(a)(3), the state submitted a technical demonstration that included photochemical model simulations to evaluate the sensitivity of $PM_{2.5}$ to increases in ammonia emissions in the Logan nonattainment area. Specifically, Utah performed model sensitivity simulations to evaluate the effect of increases in ammonia emissions of 115 tpy from each of two hypothetical new or modified point sources.[3] The two hypothetical ammonia point source emissions were set equal to the largest existing point source of ammonia in the Cache Valley and were located 15 km north and 10 km south of the Logan federal reference monitor site. Model simulations were performed using both a ground level release and elevated stack (254 m above ground level) release of the ammonia emissions. The added ammonia emissions had no effect on the modeled concentrations $PM_{2.5}$ concentrations in the Cache Valley. This finding is consistent with the ambient monitoring data that showed large, excess ambient ammonia concentrations in the Cache Valley during $PM_{2.5}$ episodes. The excess gas ammonia indicates that ammonia nitrate formation in the Cache Basin is limited by the availability of nitric acid and would be relatively insensitive to changes in ammonia emissions. The high concentrations of ammonia are associated with intensive livestock operations within the Cache Basin. Under these conditions, formation for ammonium nitrate is limited by the availability of nitric acid and is insensitive to increases in ammonia emissions.

Based on the addition of all four precursors to the NNSR program, except for ammonia in the Logan nonattainment area, and our review of the submitted technical demonstration for the Logan nonattainment area, we propose to approve the revisions to R307–101–2.

R307–403–1 (Purpose and Definitions)

Utah also performed model simulations to evaluate sensitivity of ammonium nitrate to changes in ammonia emissions in the Provo and Salt Lake nonattainment areas. In these basins, Utah found that ammonia nitrate was sensitive to 50% reductions in total emissions. This finding is consistent with ambient monitoring data which indicates that ammonia nitrate formation can sometimes be ammonia limited during intense inversion episodes, especially in the Salt Lake nonattainment area.[4] Thus, Utah concluded that $PM_{2.5}$ formation is sensitive to changes in ammonia emissions.[5] Accordingly, the revisions to R307–403–1 specify that ammonia remains a $PM_{2.5}$ precursor in the Provo and Salt Lake nonattainment areas, and also specifies what emission rates are considered ''significant'' for ammonia as a precursor to $PM_{2.5}$. The revisions to R307–401–1 also add text clarifying the EPA's role in approving demonstrations satisfying 40 CFR part 51.1006(a)(3).

As discussed above, the 2016 $PM_{2.5}$ SIP Requirements Rule provides for optional precursor demonstrations to exempt sources of the precursor from NNSR. In the absence of a demonstration the precursor ($SO_2$, $NO_X$, VOC, or ammonia) must be regulated in the NNSR program. This includes establishing a SER for each precursor in order to determine whether a modification at an existing major stationary source is a major modification and therefore subject to NNSR. Our regulations for NNSR contain SERs for $SO_2$, $NO_X$, and VOC; however, the EPA explained that the definition of ''significant'' in 40 CFR 165(a)(1)(x) does not contain a SER for ammonia as a precursor to $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas and stated that a national rulemaking to develop a SER for ammonia was neither warranted or effective. In the $PM_{2.5}$ SIP Requirements Rule, the EPA finalized a provision that requires states that must regulate modified major stationary sources of ammonia to develop and submit a definition of ''significant,'' such as an appropriate SER, for ammonia to be included in the state's SIP (see 40 CFR 51.165(a)(1)(x)(F)). The EPA recommended that states consult with the appropriate EPA Regional Office to develop an ammonia SER as a means of defining ''significant'' for a particular nonattainment area. In the $PM_{2.5}$ SIP Requirements Rule, 81 FR 51844/3, the EPA stated that the ammonia SER in a Moderate nonattainment area should be no greater than 100 tpy, and no greater than 70 tpy in a Serious $PM_{2.5}$ nonattainment area. The rulemaking also stated that states which regulate ammonia as a $PM_{2.5}$ precursor should submit to the EPA a technical justification for their ammonia SER for a nonattainment area that the

[3] Logan Moderate $PM_{2.5}$ SIP NNSR Demonstration.

[4] A comparison of AMoN measurements with localize, arrayed passive NH3 samplers in Northern Utah, presentation by Dr. Randall Martin and Dr. Munkh Baasandorj, available at: *http://nadp.slh.wisc.edu/conf/2016/pptpdf/111_martin.pdf.*

[5] We note that Utah did not submit modeling specifically showing that $PM_{2.5}$ formation is sensitive to ammonia *increases.* However, the $PM_{2.5}$ SIP Requirements Rule does not require a state to analyze precursor increases when the state is regulating the precursor in the NNSR program; analysis of precursor increases is only required when a state wants to exempt the precursor.

state includes as part of their nonattainment permitting SIP rules.

The EPA Region 8 has worked closely with Utah in developing Utah's technical justification for the ammonia SER. Utah performed additional model simulations using the CAMx model to evaluate the sensitivity of $PM_{2.5}$ to increases in ammonia emissions for major source modifications within the Provo and Salt Lake nonattainment areas.[6] As described above and in more detail in the TSD, the CAMx model was evaluated for a January 2011 multi-day $PM_{2.5}$ episode, and model sensitivity to ammonia was also evaluated for this episode. Utah added three fictitious ammonia point sources to the Salt Lake nonattainment area, each with increased ammonia emissions of 70 tpy, for a cumulative increase of 210 tpy in ammonia emissions. Utah evaluated the model response over the entire nonattainment area and found that the model grid cell with the largest increase in $PM_{2.5}$ was 1.13 micrograms per cubic meter (ug/m$^3$). This is less than the 1.3 ug/m$^3$ significance threshold recommended in the EPA $PM_{2.5}$ precursor guidance. Utah performed similar modeling in the Provo nonattainment area with 70 tpy increased emissions for two fictitious point sources, located close to existing major point sources, for a cumulative increase of 140 tpy, and found that the model increases in $PM_{2.5}$ were below the 1.3 ug/m$^3$ significance threshold. Thus, Utah concluded that the 70 tpy SER threshold was appropriate for both the Salt Lake and Provo nonattainment areas. The EPA finds that the Utah ammonia sensitivity modeling was performed consistent with EPA modeling guidance, and that the model sensitivity to increases in point sources of ammonia supports the 70 tpy SER threshold. We therefore propose to approve the 70 tpy SER and other revisions to R307–403–1.

R307–403–2 (Applicability)

Utah corrected and clarified text to ensure a more comprehensive application of federal nonattainment permitting requirements. Utah committed to revise R307–403–3, including R307–403–3(2) and R307–403–3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment. This was addressed in revisions to R307–403–2(10.)

R307–403–3 (Review of Major Sources of Air Quality Impact)

As discussed above, Utah committed to: (1) Revise R307–403–3(3) to remove the reference to NNSR determinations being made ''at the time of the source's proposed start-up date''; (2) Revise R307–403–3, including R307–403–3(2) and R307–403–3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment; and (3) Revise R307–403–3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307–403–1, to explicitly state that LAER applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas.

Utah's revisions to R307–403–3 submitted on August 7, 2018 satisfy all of these commitments. In addition, Utah also updated the significance level thresholds table, adding particulate matter and nitrogen oxide limits, which meet the requirements in 40 CFR 51.165(a)(13)(b).

R307–403–4 (General Offset Requirements)

Utah committed to revise R307–403–4 to incorporate the requirements from 40 CFR 51.165 to establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment. Utah's revisions to R307–403–3 submitted on August 7, 2018, satisfy this commitment. Utah also committed to add a section to their nonattainment rules which address emission offset requirements for $PM_{2.5}$ nonattainment areas, as required in 40 CFR 51.165(a)(11.) This new section was added to R307–403–5.

R307–403–5 (Offsets: Particulate Matter Nonattainment Areas)

Previously, this section addressed emission offsets for $PM_{10}$ nonattainment areas. The August 7, 2018 revision(?) adds a new section to R307–403–5 to address emission offset requirements for $PM_{2.5}$ nonattainment areas. In addition, the text was amended and slightly reorganized to clarify the distinction between the $PM_{10}$ and $PM_{2.5}$ offset requirements.

The new $PM_{2.5}$ section (R307–403–5(2)) addresses the new $PM_{2.5}$ requirements set out in the $PM_{2.5}$ SIP Requirements Rule as they apply to offsets. First, the section reiterates the major stationary source threshold at 100 tpy and 70 tpy of $PM_{2.5}$ or a $PM_{2.5}$ precursor (as specified by the provisions above; *i.e.,* $SO_2$, $NO_X$, and VOC in the Logan, UT–ID area and $SO_2$, $NO_X$, VOC, and ammonia in the Salt Lake and Provo areas), respectively, for Moderate and Serious $PM_{2.5}$ nonattainment areas. Second, it reiterates the SERs discussed above for $PM_{2.5}$ (*i.e.,* 10 tpy direct $PM_{2.5}$, 40 tpy $SO_2$, 40 tpy $NO_X$, 40 tpy VOC, and, in the Salt Lake and Provo nonattainment areas, 70 tpy ammonia). This section then requires new major stationary sources and major modifications to obtain offsets at a ratio of 1:1 (or at a more stringent ozone or $PM_{10}$ offset ratio if one applies) and does not allow interpollutant trading. We propose to approve the revisions to R307–403–5 as consistent with the requirements for applicability and offsets found in 40 CFR 51.165.

R307–403–7 (Offsets: Baseline)

Utah's submittal clarifies the requirement that credit for reductions for offset purposes (in accordance with CAA Section 173(c)(1) and 40 CFR 51.165(a)(3)) should be calculated based on actual emissions. The revisions to R307–403–7 adds the sentence: ''The offset baseline shall be the actual emissions, as defined in R307–401–2, of the source from which credits are obtained.'' This sentence is essentially identical to the last sentence in 40 CFR 51.165(a)(3), except it refers to a separate definition of ''actual emissions.'' This separate definition of ''actual emissions'' in R307–401–2 is identical to that in 40 CFR 51.165. We therefore propose to approve this revision.

R307–403–9 (Construction in Stages)

The previous version of R307–403–9 provided that for a source constructed in stages, each of which have a potential to emit (PTE) below 100 tpy, the allowable emissions for each stage would be added together to determine NNSR applicability. Utah revised this section to replace 100 tpy with ''the significance level for determining a major source'' to reflect that the reclassification to Serious for two areas has changed the relevant thresholds. We propose to approve this change.

[6] ''Establishing an Ammonia Threshold for Major Source Modification,'' Utah Division of Air Quality, June 21, 2018, available in the docket.

## III. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Utah SIP revisions that the EPA is proposing to approve do not interfere with any applicable requirements of the Act. The revisions to R307–101–2 and R307–403 submitted by Utah on March 27, 2014, and August 7, 2018, do not relax any existing requirements and are intended to meet applicable requirements of the Act. Therefore, CAA section 110(l) requirements are satisfied.

## IV. Incorporation by Reference

In this rule, 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 Utah rules promulgated in the DAR, R307–400 Series as discussed in section III of this preamble. 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.*

May 30, 2019.

**Debra Thomas,**

*Acting Regional Administrator, EPA Region 8.*

[FR Doc. 2019–11700 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2019–0081; FRL–9994–56–Region 8]**

## Clean Data Determination; Salt Lake City, Utah 2006 Fine Particulate Matter Standards Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to make a clean data determination (CDD) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) Salt Lake City, Utah, (UT) nonattainment area (NAA). The proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data for the period 2016–2018, available in the EPA's Air Quality System (AQS) database, showing the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). Based on our proposed determination that the Salt Lake City, UT NAA is currently attaining the 24-hour $PM_{2.5}$ NAAQS, the EPA is also proposing to determine that the obligation for Utah to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is not applicable for as long as the area continues to attain the NAAQS.

**DATES:** Comments must be received on or before July 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0081 at *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 the disclosure of which 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Crystal Ostigaard, Air and Radiation Division, U.S. EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

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

## I. Background

On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter (μg/m$^3$) to 35 μg/m$^3$. The EPA retained the form of the 1997 24-hour standard, that is, the 98th percentile of the annual 24-hour concentrations at each population-oriented monitor within an area, averaged over 3 years. *See* 71 FR 61164–5 (October 17, 2006).

On November 13, 2009 (74 FR 58688), the EPA designated a number of areas as nonattainment for the 24-hour $PM_{2.5}$ NAAQS of 35 μg/m$^3$, including the Salt Lake City, UT NAA. The Salt Lake City, UT NAA includes Box Elder County (partial), Davis County, Salt Lake County, Tooele County (partial), and Weber County (partial). The EPA originally designated these areas under the general provisions of CAA title I, part D, subpart 1 (''subpart 1''), under which attainment plans must provide for the attainment of a specific NAAQS (in this case, the 2006 $PM_{2.5}$ standards) as expeditiously as practicable, but no later than 5 years from the date the areas were designated nonattainment.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit held in *NRDC* v. *EPA* [1] that the EPA should have implemented the 2006 24-hour $PM_{2.5}$ standard based on both the general NAA requirements in subpart 1 and the PM-specific requirements of CAA title I, part D, subpart 4 (''subpart 4''). In response to the Court's decision in *NRDC* v. *EPA,* on June 2, 2014 (79 FR 31566), the EPA finalized the ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) NAAQS and 2006 $PM_{2.5}$ NAAQS.'' This rule classified the areas that were designated in 2009 as nonattainment to Moderate and set the attainment SIP submittal due date for those areas at December 31, 2014. Additionally, this rule established the Moderate area attainment date of December 31, 2015. After the court's decision and the EPA's June 2, 2014 rule, on December 16, 2014, Utah withdrew all prior Salt Lake City, UT $PM_{2.5}$ SIP submissions and submitted a new SIP to address both the general requirements of subpart 1 and the PM-specific requirements of subpart 4 for Moderate areas.

On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ SIP Requirements Rule''), 81 FR 58010, which addressed the January 4, 2013 court ruling. The $PM_{2.5}$ SIP Requirements Rule provides the EPA's interpretation of the requirements applicable to $PM_{2.5}$ NAAs and explains how air agencies can meet the statutory SIP requirements that apply under subparts 1 and 4 to areas designated nonattainment for any $PM_{2.5}$ NAAQS.

The EPA has previously acted on portions of Utah's Moderate area attainment plan for the Salt Lake City, UT NAA. Specifically, we approved certain area source rules and related reasonably available control measure (RACM) analyses on February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988) and September 14, 2017 (82 FR 43205). We have not disapproved any portions of the plan; as a result, the clocks for sanctions under section 179(a) and for a Federal Implementation Plan (FIP) under section 110(c) are not in effect for the Salt Lake City, UT NAA.

Finally, on May 10, 2017 (82 FR 21711), the EPA determined that the Salt Lake City, UT NAA failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the Moderate attainment date of December 31, 2015. With this determination, the Salt Lake City, UT NAA was reclassified as a ''Serious'' area for the 2006 24-hour $PM_{2.5}$ NAAQS, with a new attainment date of December 31, 2019. This reclassification triggered an obligation for Utah to submit a new, Serious area attainment plan consisting of several elements, including a control strategy and demonstration of attainment by the new attainment date. *See* 40 CFR 51.1003(b)(1).

## II. Clean Data Determination

Over the past two decades, the EPA has consistently applied its ''Clean Data Policy'' interpretation to attainment related provisions of Part D of the CAA. The EPA codified the Clean Data Policy in the $PM_{2.5}$ SIP Requirements Rule (40 CFR 51.1015(a)) for the implementation of current and future $PM_{2.5}$ NAAQS. *See* 81 FR 58010, 58161 (August 24, 2016). For a complete discussion of the Clean Data Policy's history and the EPA's longstanding interpretation under the CAA, please refer to the $PM_{2.5}$ SIP Requirements Rule.[2]

As codified at 40 CFR 51.1015(a) in the $PM_{2.5}$ SIP Requirements Rule, upon a determination by the EPA that a Moderate $PM_{2.5}$ NAA has attained the $PM_{2.5}$ NAAQS, the requirements for the State to submit an attainment demonstration, provisions demonstrating timely implementation of RACM (including reasonably available control technology (RACT)), a reasonable further progress (RFP) plan, quantitative milestones and quantitative milestone reports, and contingency measures shall be suspended. Additionally, under 40 CFR 51.1015(b), upon determination by the EPA that a Serious $PM_{2.5}$ NAA has attained the $PM_{2.5}$ NAAQS, the requirements for the State to submit an attainment demonstration, RFP, quantitative milestones and quantitative milestone reports, and contingency measures for the area will be suspended. However, the EPA's longstanding policy for the best available control measure (BACM)/best available control technology (BACT) requirement of CAA section 189(b)(1)(B) is that the requirement is independent of attainment. Thus, a CDD would not suspend the obligation for Utah to submit any applicable outstanding BACM/BACT requirements or other requirements that are independent of attainment.

By extension, the requirement to submit a motor vehicle emission budget (MVEB) for the attainment year (both for a Moderate and Serious NAA) for the purposes of transportation conformity is also suspended. A MVEB is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting RFP milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.[3] For the purposes of the transportation conformity regulations, the control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy

[1] 706 F.3d 428 (D.C. Cir. 2013).

[2] *See* Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010, 58127 (August 24, 2016).

[3] 40 CFR 93.101.

CAA requirements for demonstrations of RFP and attainment.[4] Given that MVEBs are required to support the RFP and attainment demonstration requirements in the attainment plan, suspension of the RFP and attainment demonstration requirements through a CDD also suspends the requirement to submit MVEBs for the attainment and RFP years. The suspension of planning requirements pursuant to 40 CFR 51.1015 does not preclude the State from submitting suspended elements of its Moderate and Serious area attainment plans for the EPA's approval in order to strengthen the State's SIP.

The planning elements under subpart 1 and subpart 4 generally include RFP, attainment demonstrations, RACM/RACT, NAA contingency measures, and other state planning requirements related to attaining the NAAQS.[5] The suspension of the obligation to submit such requirements applies regardless of when the plan submissions are due. The CDD does not suspend CAA requirements that are independent of helping the area achieve attainment, such as the requirements to submit an emissions inventory, nonattainment new source review (NNSR), and BACM/BACT requirements. The determination of attainment is not equivalent to a redesignation, and the State must still meet the statutory requirements for redesignation in order to be redesignated to attainment. *See* CAA section 107(d)(3)(E).

In accordance with 40 CFR 51.1015(a) and (b), the CDD suspends the aforementioned SIP obligations until such time as the area is redesignated to attainment, after which such requirements are permanently discharged; or the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the State shall submit such attainment plan elements for the Moderate and Serious NAA plans by a future date to be determined by the EPA and announced through publication in the **Federal Register** at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

*A. Monitoring Network Considerations*

Determining whether an area has attained the NAAQS is based on monitored air quality data; thus, the validity of a determination of attainment depends in part on whether the monitoring network adequately measures ambient $PM_{2.5}$ levels in the NAA. The Utah Department of Air Quality (UDAQ) is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for the Salt Lake City, UT NAA and submitting the data to AQS. UDAQ annually certifies that the data they submit to AQS are quality assured. UDAQ also submits an annual monitoring network plan (AMNP) to the EPA. These plans discuss the status of the air monitoring network, as required under 40 CFR part 58. With respect to $PM_{2.5}$ monitoring in the Salt Lake City, UT NAA, the EPA found that UDAQ's annual network plans met the applicable requirements under 40 CFR part 58 for the relevant period, 2016–2018. The UDAQ operated eight $PM_{2.5}$ State and Local Air Monitoring Station (SLAMS) monitors during the 2016–2018 period within the Salt Lake City, UT $PM_{2.5}$ NAA: Brigham City, Ogden 2, Bountiful, Magna, Rose Park, Hawthorn, Herrimam #3, and Erda.

*B. Salt Lake City, UT Monitoring*

On March 14, 2017, the EPA approved Utah's 2016 AMNP, and on April 20, 2017, UDAQ submitted a letter that contained the AMP 600 and AMP 450NC reports required to certify the 2016 air quality data in Utah. UDAQ completed the date certification process in AQS and with the April 20, 2017 letter, certified that the 2016 air quality data is accurate.

On October 27, 2017, the EPA approved Utah's 2017 AMNP, and on April 10, 2018, the UDAQ submitted a letter that contained the AMP 600 and AMP 450NC reports required to certify the 2017 air quality data in Utah. With the April 10, 2018 letter, UDAQ completed the data certification process in AQS and certified that the 2017 air quality data is accurate.

On March 20, 2019, the EPA approved Utah's 2018 AMNP, and on February 1, 2019, the UDAQ submitted a letter that contained the AMP 600 and AMP 450NC reports required to certify the 2018 air quality data in Utah. With the February 1, 2019 letter, UDAQ completed the data certification process in AQS and certified that the 2018 air quality data is accurate.

*C. Evaluation of Current Attainment*

The EPA's evaluation of whether the Salt Lake City, UT $PM_{2.5}$ NAA has attained the 2006 24-hour $PM_{2.5}$ NAAQS is based on our review of all valid monitoring data ''produced by suitable monitors that are required to be submitted to AQS, or otherwise available to EPA ....'' *See* Appendix N, 3.0(a). Based on our review, the $PM_{2.5}$ monitoring network for the Salt Lake City, UT NAA meets the requirements stated above and is therefore adequate for use in determining whether the area attained the 2006 24-hour $PM_{2.5}$ NAAQS.

The EPA reviewed the $PM_{2.5}$ ambient air monitoring data from the Brigham City (AQS site 49–003–0003), Ogden 2 (AQS site 49–057–0002), Bountiful (AQS site 49–011–0004), Magna (AQS site 49–035–1001), Rose Park (AQS site 49–035–3010), Hawthorn (AQS site 49–035–3006), Herrimam #3 (AQS site 49–035–3013), and Erda (AQS site 49–045–0004) monitoring sites consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA AQS database for the Salt Lake City, UT NAA.

The CAA allows for the exclusion of air quality monitoring data from design value calculations when there are exceedances caused by events, such as wildfires or high wind events, that meet the criteria for an exceptional event identified in the EPA's implementing regulations, the Exceptional Events Rule at 40 CFR 50.1, 50.14, and 51.930. In 2017, emissions from fireworks and wildfires impacted $PM_{2.5}$ concentrations recorded at the Rose Park monitor within the Salt Lake City, UT NAA. For purposes of this proposed action, on November 21, 2017 and January 2, 2018, UDAQ submitted exceptional event demonstrations to request exclusion of 2017 data impacted by fireworks and wildfires. On February 2, 2019, UDAQ submitted supplemental information pertaining to the exceptional event package for data impacted by fireworks in 2017. The EPA evaluated UDAQ's exceptional event demonstrations for the flagged values of the 24-hour $PM_{2.5}$ listed in Table 1, at the Rose Park monitor in the Salt Lake City, UT NAA, with respect to the requirements of the EPA's Exceptional Events Rule (40 CFR 50.1, 50.14, and 50.930).

[3] 40 CFR 93.101.

[4] 40 CFR 93.101.

TABLE 1—24-HOUR $PM_{2.5}$ VALUES AT THE ROSE PARK MONITORING STATION, CONCURRED ON BY THE EPA AS MEETING THE EXCEPTIONAL EVENT CRITERIA

[μg/m³]

| Date | 24-hr $PM_{2.5}$ concentration 49–035–3010 | | |
|---|---|---|---|
| | FRM filter | Co-located filter | Continuous (primary monitor) |
| 7/4/2017 | 37.8 | 41 | 40 |
| 9/6/2017 | 37.8 | 37.7 | 36.8 |

On May 23, 2019 and May 28, 2019, the EPA concurred with UDAQ's requests to exclude event-influenced data listed in Table 1 above, finding that the UDAQ demonstration met the Exceptional Event Rule criteria. As such, the event-influenced data have been removed from the data set used for regulatory purposes. For this proposed action, the EPA relies on the calculated values that exclude the event-influenced data (*see* Table 2 below). The EPA now proposes to take final regulatory action on UDAQ's request to exclude $PM_{2.5}$ data listed in Table 1, in regulatory decisions. For further information, refer to UDAQ's Exceptional Event demonstration packages and the EPA's concurrence and analyses located in the docket for this proposed action.

As shown in Table 2 below, Brigham City, Ogden 2, Bountiful, Rose Park and Hawthorn monitors in the Salt Lake City, UT NAA have collected complete data since 2012 and are trending downward overall. The Magna monitor was trending downward from 2012; however, the monitor was discontinued in 2018. The Erda monitor began collecting data in 2016 and has an attaining design value for 2016–2018. The Herrimam #3 monitor began collecting data in 2016; however, quarter 1 of 2018 is incomplete but is still showing attainment for 2016–2018.

The design value for the 2006 24-hour $PM_{2.5}$ NAAQS for the years 2016–2018 at the Rose Park monitor site was 35 μg/m³, which is equal to the standard of 35 μg/m³. See Table 2 below for the annual 98th percentiles and 3-year design value for the 2016–2018 monitoring period. As a result, the EPA has preliminarily concluded that the Salt Lake City, UT NAA continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³ for the period 2016–2018, the most recent 3-year period of certified data availability. Should there be a subsequent violation of the 2006 $PM_{2.5}$ standards in the Salt Lake City, UT NAA, the EPA will withdraw the CDD.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE SALT LAKE CITY, UT NAA FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS

[μg/m³]

| Monitor site | Monitor ID | 3-year design values | | | | |
|---|---|---|---|---|---|---|
| | | 2012–2014 | 2013–2015 | 2014–2016 | 2015–2017 | 2016–2018 |
| Brigham City | 49–003–0003 | 35 | 35 | 31 | 33 | 32 |
| Ogden 2 | 49–057–0002 | 35 | 37 | 35 | 33 | 30 |
| Bountiful | 49–011–0004 | 38 | 40 | 33 | 30 | 29 |
| Magna | 49–035–1001 | 35 | 35 | 32 | 28 | Discontinued |
| Rose Park | 49–035–3010 | 43 | 44 | 41 | 37 | 35 |
| Hawthorn | 49–035–3006 | 41 | 42 | 37 | 34 | 33 |
| Herrimam #3 | 49–035–3013 | — | — | — | — | *27 |
| Erda | 49–045–0004 | — | — | — | — | 26 |

*Q1 of 2018 is incomplete. *See* Utah Clean Data Determination of the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standard for the Provo, Utah Nonattainment Area Memo found in the accompanying docket.

*D. Clean Data Determination for the Salt Lake City, UT Nonattainment Area*

Based on the monitoring data for the period 2016–2018, the EPA is proposing to determine that the area has demonstrated attainment of the 2006 24-hr $PM_{2.5}$ NAAQS. In accordance with 40 CFR 51.1015, a CDD can be made upon a determination by the EPA that a Moderate or Serious $PM_{2.5}$ NAA is attaining the $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, so long as this area continues to meet the standard, finalization of this determination suspends the requirements for this area to submit an attainment demonstration, associated RACM/RACT (for the Moderate NAA plan), RFP plan, contingency measures, and any other planning SIP requirements related to the attainment of the 2006 $PM_{2.5}$ NAAQS. For purposes of this NAAQS, the requirements to submit a projected attainment inventory as part of an attainment demonstration or RFP as well as a MVEB are also suspended by this determination.

As discussed in the $PM_{2.5}$ SIP Requirements Rule, the nonattainment base emissions inventory required by section 172(c)(3) is not suspended by this determination because the base inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127–8 and 80 FR 15340 at 15441–2. Additionally, the $PM_{2.5}$ SIP Requirements Rule states that the NNSR requirement is required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), and is not suspended by a CDD because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127. Furthermore, the BACM/BACT requirements found in CAA section 189(b)(1)(B) are not suspended with a CDD for a Serious NAA due to this requirement being independent of attainment. *See* 81 FR 58010 at 58128.

Under the proposed CDD, the planning requirements noted above (for both Moderate and Serious areas) shall be suspended, until such time as the area is redesignated to attainment, after which such requirements are permanently discharged. This proposed

action, if finalized, will not constitute a redesignation to attainment under CAA section 107(d)(3)(E), because the State must have an approved maintenance plan for the area as required under section 175A of the CAA, and the EPA must determine that the area has met the other requirements for redesignation in order to be redesignated to attainment. Therefore, the designation status of the area will remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment under CAA section 107(d)(3)(E).

It is possible, although not expected, that the Salt Lake City, UT area could violate the 24-hour $PM_{2.5}$ NAAQS before a maintenance plan is adopted, submitted, and approved, and the area is redesignated to attainment. Under 40 CFR 51.1015(a)(2) and (b)(2), if the EPA determines that the area has re-violated the 24-hour $PM_{2.5}$ NAAQS, the EPA will rescind the CDD and the State shall be required to submit the suspended attainment plan elements. Even so, submission of the suspended elements may be insufficient to eliminate future violations. Therefore, the issuance of a SIP call under section 110(k)(5) could be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of this finding. Under CAA section 172(d), the EPA may reasonably adjust the dates applicable to these requirements.

## III. Proposed Action

The EPA is proposing to make a CDD for the 2006 24-hour $PM_{2.5}$ Salt Lake City, UT NAA based on the area's monitoring data for 2016–2018. Pursuant to 40 CFR 51.1015(a) and (b), the EPA proposes to determine that the obligation to submit attainment-related SIP revisions arising from classification of the Salt Lake City, UT area as a Moderate NAA and subsequent reclassification as a Serious NAA under subpart 4 of part D (of title I of the Act) for the 2006 24-hour $PM_{2.5}$ NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. However, the CDD does not suspend UDAQ's obligation to submit non-attainment-related requirements, which includes the base-year emission inventory, NNSR revisions, and BACM/BACT. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

## IV. Statutory and Executive Order Reviews

This action proposes to issue a determination of attainment based on air quality and to suspend certain federal requirements, and thus, would not impose additional requirements beyond those imposed by state law. For this 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 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, this proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 30, 2019.

**Debra Thomas,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2019–11702 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2018–0177; FRL–9994–25–Region 6]**

## Air Plan Approval; New Mexico; City of Albuquerque-Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. The EPA is proposing to approve a newly adopted Minor New Source Review (MNSR) permitting regulation to waive permitting requirements for certain sources, and to create new procedures for authorizing construction and modification of certain sources in a related amendment to another regulation.

**DATES:** Written comments must be received on or before July 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2018–0177, at *https://www.regulations.gov* or via email to *barrett.richard@epa.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 Rick Barrett, (214) 665–7227, *barrett.richard@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

**FOR FURTHER INFORMATION CONTACT:** Rick Barrett, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Dallas, TX 75202, (214) 665–7227, *barrett.richard@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214–665–7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

## I. Background

The Clean Air Act (CAA or the Act) at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor New Source Review (MNSR). The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166. Minor NSR regulations are contained at 40 CFR 51.160–51.164.

The SIP submittal under review in this action includes the addition of a newly adopted regulation, 20.11.39 (Part 39) of the New Mexico Administrative Code (NMAC), along with a related amendment to regulation 20.11.41 (Part 41) of the NMAC. These revisions incorporate regulations to waive permit requirements for certain gasoline dispensing facilities (GDF), and emergency stationary reciprocating internal combustion engines (ES–RICE); and to create new procedures for authorizing construction and modification of the eligible sources.

## II. What did City of Albuquerque-Bernalillo County submit?

On January 18, 2018, the governor of New Mexico submitted revisions to the City of Albuquerque-Bernalillo County (the ''County'') Minor NSR SIP to EPA. This proposed SIP revision would apply exclusively to the City of Albuquerque and Bernalillo County.

## III. EPA's Evaluation

The current County SIP includes the most recent EPA approved Part 41 provisions (See 82 FR 29421, June 29, 2017), which form the current basis of the County's Minor NSR SIP program implemented by the City of Albuquerque Environmental Health Department (the ''Department''). The following sections of this proposed action analyze the proposed addition of a newly adopted regulation, PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES, Part 39 of the NMAC, along with a related amendment to the CONSTRUCTION PERMITS regulation, Part 41 of the NMAC, in order to determine whether the submitted revisions under the Governor of New Mexico's letter meet the requirements of the CAA and the EPA's regulations, policy, and guidance for NSR permitting. In newly adopted Part 39, sections 1, 3, 4, 5, 6, 9, 10, 11, 16, 18, 19, and 20, are non-substantive, containing provisions related to fees, statutory authority, effective date, and other elements that govern the newly established Part,[1] and thus will not be analyzed in the details below. Table 7 below lists the revisions which are being proposed for approval in this proposed rulemaking.

### *A. What are the requirements for the EPA's evaluation of a preconstruction permitting program SIP submittal?*

In addition to the preconstruction permitting program requirements of section 110(a)(2), our evaluation must ensure that the submittal complies with section 110(l) of the CAA before it can be approved into the SIP. Section 110(l) states that the EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed MNSR SIP revision must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act.

### *B. Summary of Albuquerque/Bernalillo County's SIP Revisions Submittal*

The January 18, 2018, SIP submittal meets the completeness criteria established in 40 CFR part 51, appendix V. In addition to the completeness review, the revisions contained in the SIP submittal were evaluated against the applicable requirements contained in the Act and 40 CFR part 51.

Part 39, section 2, Scope, governs the applicability of the exemption from Minor NSR permitting and limits the exemption to two types of stationary source categories: Emergency stationary reciprocating internal combustion engines (ES–RICE), and gasoline dispensing facilities (GDF). Section 2 also includes exclusions from Part 39 for certain sources. Part 39 does not apply to: Stationary sources within Bernalillo County that are located on Indian lands; stationary sources that, in the aggregate, constitute a major source under the applicable provisions of NMAC which are located on one or more contiguous or adjacent properties, and which are under common control of the same person; any non-emergency stationary RICE engines; sources which contain emission units other than ES–RICE and GDF, and that require a construction permit; sources that are part of a Title V permit; or sources located at a single family private residence.

Section 7 of the SIP submittal provides definitions for the terms used throughout 20.11.39 NMAC. The submitted revisions provide new definitions for several new terms. The definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition

[1] These sections can be reviewed in the County's submittal which is included in the docket for this proposed rulemaking. See also Attachment A, New Part 39 (pp. 1–8), and Amended Part 41 (pp. 2–3), for new and comparison wording in the County's submittal.

in 20.11.39 NMAC shall govern. Definitions provided in the applicable federal standards referenced in Part 39 shall apply to source categories subject to those federal standards which are incorporated by reference into board regulations.

Section 12 of the SIP submittal contains the provisions for Part 39 sources to qualify for a waiver from construction permit requirements pursuant to 20.11.41. Owners and operators of Part 39 sources shall apply for an Air Quality Notification (AQN) rather than a construction permit when submitting an application to the department. If an owner or operator of a source establishes that it is a Part 39 source and demonstrates that the owner or operator will comply with all applicable regulations set out in Section 13 of this Part, the department shall waive compliance from further source registration or construction permitting requirements pursuant to 20.11.40 NMAC or 20.11.41 NMAC. This Part shall not waive any permit requirements for sources which are not ES–RICE or GDF. Except as noted below in 20.11.39.15, no public notice is required if the department waives further permitting requirements for a Part 39 source. No department hearing shall be held for a Part 39 source. The issuance of an AQN by the department is not a permitting action and is not subject to petition to the Albuquerque-Bernalillo County air quality control board. The new AQN will assist in ensuring that these sources are not engaging in acts that will result in an exceedance of one of the NAAQS, in clarifying when each annual emission inventory is to be submitted, and that notification must be provided to the Department.

Section 13 of the SIP submittal contains the requirements for the two source categories to which Part 39 applies. General requirements include that sources comply with any federal regulations which are incorporated by reference into board regulations and which apply to that source category; that no owner or operator of a source in a source category to which this part applies shall construct or operate a Part 39 source without having first applied to the department for and received an AQN; that the owner or operator of each Part 39 source shall submit an annual emissions report to the department by March 15 of each year. Note that for their annual emission report, GDF granted an AQN shall submit a report of their annual gasoline throughput for the previous January through December, and ES–RICE granted an AQN shall submit a report of their annual operating hours for the previous January through December. The emission report must include a signed certification, and nothing in Part 39 relieves any owner or operator of any source from the responsibility to comply with any applicable requirement in local, state, or federal law. No Part 39 source shall emit any regulated air pollutant in quantities which would constitute a major source.

Section 13 also outlines specific requirements for each category. For ES–RICE not subject to the federal emissions standards listed below, they shall comply with all applicable board and federal regulations identified in the AQN. ES–RICE subject to 40 CFR part 60 subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 CFR part 60 subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, and 40 CFR part 63 subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, shall comply with all applicable requirements in those federal regulations, as amended, and all applicable board regulations identified in the AQN. GDF sources subject to 40 CFR part 63 subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities shall comply with all applicable requirements in 40 CFR part 63 subpart CCCCCC, as amended, and all applicable board regulations identified in the AQN.

Section 14 of the SIP submittal contains the requirement that each owner or operator of a Part 39 source apply for an AQN with the department in compliance with the requirements of this section. A person applying to the department for an AQN shall submit a completed application provided by the department, and the department shall reject any incomplete application for an AQN. Certain information is required for the department to determine that an application for an AQN is complete. This information includes: The name, street address and post office address of the owner and any operators of the source or responsible entity; sufficient attachments, including calculations, computations and all other analyses used by the applicant to provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit and control measures used to comply with all applicable federal standards. Information required specifically for GDF includes: The anticipated annual gasoline throughput; the total number of refueling positions; for each refueling position, identify whether it dispenses gasoline only, diesel only, both, or is for heavy duty truck diesel refueling. Information specifically for ES–RICE includes: A statement that the engine will only be used for emergency purposes, other than as allowed by applicable regulations.

The Department also requires the following information from sources eligible for the Minor NSR permitting exemption: Any other relevant information that the department may reasonably require; the signature of the applicant, with the date it was signed, certifying that the information represented in the application and attachments, if any, is true, accurate and complete and that the owner and all operators will comply with all applicable requirements in board regulations for that source category; payment for the appropriate application fee required; and that the department shall not require any Part 39 source to submit air dispersion modeling with its AQN application.

Section 15 of the SIP submittal outlines the procedures for review of an AQN application by the department. Within 45 days after the department has received a complete application for an AQN as required, the department shall issue or deny the AQN. If the AQN is issued, the department shall send a copy of the AQN to the applicant by electronic mail, or such other means as may be necessary. If the AQN is denied, the department shall send a notice of denial to the applicant by electronic mail, or such other means as may be necessary; if the department determines that the application for the AQN is incomplete, that Part 39 does not authorize the source to receive an AQN, or that some other action is necessary, up to and including denial of an AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary; and, on the first business day of each month, the department shall publish on its website a list of all AQNs issued within the previous month, including the name and location of each AQN issued. The department shall publish a current list of all active AQNs on its website quarterly. The department website shall prominently display information enabling members of the public to contact the department regarding any AQN issued.

Section 17 of the SIP submittal outlines the compliance and enforcement provisions of Part 39. It states that owners or operators of Part 39 sources within Albuquerque-Bernalillo County shall comply with the requirements in Part 39, whether set forth in their AQN or not. These

provisions include that: Inaccurate or incomplete information in an application is a violation of Part 39; any knowing and willful false statement in an AQN application is a violation of Part 39; an ES–RICE which has been issued an AQN shall be operated for emergency use only or as necessary for exercising or maintenance of the engine; the director may issue a compliance order requiring compliance and assessing a civil penalty not to exceed $15,000.00 per day of noncompliance for any violation of any applicable board regulations by a Part 39 source, and the director may also commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. Regarding inspections, the department may conduct scheduled and unscheduled inspections to ensure compliance with any applicable board regulations. Also, that upon presentation of credentials, the department: Shall have a right of entry to, upon, or through any premises on which a Part 39 source is located or on which any records required to be maintained by any applicable board regulations; may at any reasonable time have access to and copy any records required to be established and maintained by any applicable board regulations; may inspect any monitoring equipment and method required by any applicable board regulations; and may sample any emissions that are required to be sampled pursuant to any applicable board regulations. Regarding credible evidence, any credible evidence may be used to establish whether an owner or operator of a Part 39 source has violated any applicable board regulations. Credible evidence and testing shall include but is not limited to: Compliance methods specified in any applicable board regulations; or other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and EPA. Lastly, an owner or operator of a Part 39 source who violates an applicable board regulation may be subject to enforcement action.

Title 20.11.41. CONSTRUCTION PERMITS, section 2, of the current SIP governs the scope of the Minor NSR program. The County's current SIP requires stationary sources with emissions in excess of the limits listed in this section to obtain a construction permit, unless the source or activity qualifies for an exemption. In this submittal, the County revised Part 41, section 2, subsection E(2), to include references to new regulation Part 39. Although more than one air quality regulation adopted by the board may apply to a stationary source, including 20.11.39, 20.11.40, 20.11.60, 20.11.61, 20.11.63, and 20.11.64 NMAC, nothing in 20.11.41 NMAC shall be construed to require more than one permit application for each unit proposed for construction or modification. Definitions and provisions included in specific federal program regulations shall apply to permit review of any regulated air contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

The County also revised section 2 of Part 41 by adding subsection G, which allows sources in the two exemption eligible source categories to apply for an air quality notification (AQN), which waives certain applicability requirements in Part 41. The provision states that an owner or operator of an emergency stationary reciprocating internal combustion engine or gasoline dispensing facility, as defined in Part 39, may apply for an air quality notification pursuant to that Part. If the department grants an air quality notification, then the source will not be required to apply for and obtain a construction permit.

*C. CAA 110(l) Analysis*

Each revision to an implementation plan submitted by a state under the Clean Air Act shall be adopted by such state after reasonable notice and public hearing. The County adopted the proposed revisions after reasonable notice and public hearing. CAA section 110(l) also states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. For purposes of the analysis under CAA section 110(l), we have taken into account the overall effect of the revisions included in this action. The County's proposed revisions will change the administrative procedure by which certain GDF and ES–RICE obtain authorization for construction and modification. The County's revisions would basically accomplish a procedural change and will cause no change in emission levels or controls and will not impact emissions or ambient concentration of any compounds. These revisions primarily incorporate regulations to waive permit requirements for certain gasoline dispensing facilities (GDF) and emergency stationary reciprocating internal combustion engines (ES–RICE), and to create new procedures for authorizing construction and modification of the eligible sources.

As required by section 110(l) of the CAA, we analyzed the addition of these proposed MNSR SIP revisions to ensure that they do not interfere with any applicable requirement for attainment of the NAAQS, reasonable further progress (RFP), or any other CAA requirement. Albuquerque and Bernalillo County are in attainment for all National Ambient Air Quality Standards and have been continuously since 1996. The Department has been carrying out the Minor NSR program, as revised, since January 1, 2014. Since then, there has been no indication that these sources have interfered with attainment, RFP, or any other requirement of the Act. Bernalillo County is designated attainment for all NAAQS pollutants, and the air quality trends provided in the monitoring tables below support that the air quality is improving in the County. Note that additional air quality data is included in the submittal.

The EPA took into consideration the following air quality trends when making the decision to propose that the revisions be approved into the SIP:

• Compliance with the 8-hour ozone standard which has improved county-wide with ozone pollutant concentrations trending downward since the late 1980's. The 8-Hour ozone standard trends are listed in Table 1:

TABLE 1—OZONE DATA

[Ozone Design Values (8-hour standard, primary and secondary)]

| Maximum permissible concentration under 2015 NAAQS: 0.070 parts per million | |
|---|---|
| Year | Design value (ppm) |
| 2006 | *0.073 |
| 2007 | *0.073 |
| 2008 | 0.070 |
| 2009 | 0.070 |
| 2010 | 0.068 |
| 2011 | 0.070 |
| 2012 | *0.074 |
| 2013 | *0.072 |
| 2014 | 0.068 |
| 2015 | 0.066 |
| 2016 | 0.065 |

*Data complied with the NAAQS in effect at that time.

• Compliance with the 1-Year $NO_2$ and 1-hour $NO_2$ standards has improved county-wide with $NO_2$ pollutant concentrations trending downward since the late 1990's. The 1-Year $NO_2$ trends are listed in Table 2:

TABLE 2—$NO_2$ DATA

[Nitrogen dioxide design values (1-year standard, primary and secondary)]

| Maximum permissible concentration under 1971 NAAQS: 53 parts per billion (ppb) | |
|---|---|
| Year | Design value (ppb) |
| 2006 | 15.4 |
| 2007 | 14.9 |
| 2008 | 13.2 |
| 2009 | 12.4 |
| 2010 | 12.0 |
| 2011 | 13.3 |
| 2012 | 13.8 |
| 2013 | 11.8 |
| 2014 | 11.7 |
| 2015 | 11.0 |
| 2016 | 10.4 |

• Compliance with the 24-hour $PM_{10}$ standard has improved county-wide with $PM_{10}$ pollutant concentrations trending downward since the late 1980's. The 24-Hour $PM_{10}$ trends are listed in Table 3:

TABLE 3—$PM_{10}$ DATA

[$PM_{10}$ second highest 24-hour average *]

| Maximum permissible concentration under 1987 NAAQS: 150 micrograms per cubic meter, no more than three exceedances annually | |
|---|---|
| Year | 2nd highest 24-hour average (mg/m$^3$) |
| 2006 | 148 |
| 2007 | 130 |
| 2008 | 131 |
| 2009 | 113 |
| 2010 | 102 |
| 2011 | 153 |
| 2012 | 145 |
| 2013 | 120 |
| 2014 | 152 |
| 2015 | 106 |
| 2016 | 133 |

* Data excludes values flagged for exceptional events.

As shown by Table 3, $PM_{10}$ levels in the City/County area (as measured by the second highest 24-hour average per year) have fluctuated between 102 and 153 micrograms per cubic meter over the last decade. However, the overall trend over the last decade is relatively stable, below the standard of 150 micrograms per cubic meter generally. Albuquerque and Bernalillo County have remained in attainment for the $PM_{10}$ standard during the entire period.

Table 4 shows $PM_{2.5}$ compliance with the 24-hour standard. Additional data in the submittal show $PM_{2.5}$ compliance with the annual standard. As shown in Table 4, $PM_{2.5}$ levels have remained well below the 24-hour standard.

TABLE 4—$PM_{2.5}$ DATA

[$PM_{2.5}$ design values (24-hour standard, primary and secondary)]

| Maximum permissible concentration under 2012 NAAQS: 35 micrograms per cubic meter | |
|---|---|
| Year | Design value (mg/m$^3$) |
| 2006 | 19 |
| 2007 | 18 |
| 2008 | 17 |
| 2009 | 16 |
| 2010 | 15 |
| 2011 | 23 |
| 2012 | 26 |
| 2013 | 27 |
| 2014 | 20 |
| 2015 | 18 |
| 2016 | 19 |

The next table shows carbon monoxide (CO) monitoring results and how they compare to the NAAQS. Table 5 shows CO compliance with the 8-hour CO standard. As shown by Table 5, CO levels have remained well below the 8-hour and 1-hour standards.

TABLE 5—CO DATA

[Table of CO design values (8-hour standard. primary)]

| Maximum permissible concentration under 1971 NAAQS: 9 parts per million | |
|---|---|
| Year | Design value (ppm) |
| 2006 | 3.0 |
| 2007 | 3.4 |
| 2008 | 3.4 |
| 2009 | 2.6 |
| 2010 | 2.6 |
| 2011 | 2.6 |
| 2012 | 2.2 |
| 2013 | 2. 2 |
| 2014 | 1.2 |
| 2015 | 1.4 |
| 2016 | 1 .9 |

Below, Table 6 shows sulfur dioxide ($SO_2$) monitoring results and how they compare to the 1-hour NAAQS. As shown by Table 6, $SO_2$ levels have remained well below the NAAQS threshold. Because EPA promulgated the standard in 2010 and the design value period is three years, the first design value data were not available until 2013.

TABLE 6—$SO_2$ DATA

[$SO_2$ design values (1-hour standard primary, 3-hour standard secondary)]

| Maximum permissible concentration under 2010 NAAQS: Primary standard: 75 parts per billion, secondary standard: 0.5 parts per million | |
|---|---|
| Year | Design value (mg/m$^3$) |
| 2013 | 5 |
| 2014 | 5 |
| 2015 | 5 |
| 2016 | 6 |

Following discussions with Region 6, the Department conducted additional research to supplement the submittal. This research included: The number of the GDFs in the county which have the potential to emit VOC in the ranges of 0–25 tons per year, 25–50 tons per year and 50–100 tons per year; and the methodology utilized to calculate VOC emissions from these GDF. The Department's historical approach for calculating potential VOC emissions utilized the AP–42 Table 5.2–7 emissions rate factors (June 2008). As part of the EPA Tribal Minor New Source Review (NSR) final rule (July 2011), EPA developed new guidance for calculating VOC emissions from GDF entitled ''Potential to Emit Calculator for Gasoline Dispensing Facilities'' (Final March 23, 2015). The Department recently utilized this guidance to recalculate potential VOC emissions from their GDF. The results show that all GDF within its jurisdiction fall below the current EPA SIP approved minor NSR threshold of 25 tons per year or more of any single regulated air contaminant.

Prior to the revision, any source that was subject to New Source Performance Standards for Stationary Sources (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations, regardless of its potential to emit, was automatically required to obtain a permit. This subjected all GDF, regardless of their potential to emit, to NSR permitting. As stated in response to a comment received during the County's public comment period, ''the revision does not remove any existing air quality control requirement or increase air pollution. EHD proposes to change the process by which certain sources are regulated, not end any regulation of those sources. The result, as we have tried to make clear, will be to change one feature of public participation in air quality, not end that participation

altogether.'' [2] Further, the Department has found that its universe of GDF contribute only approximately 0.28% of the VOC in the ambient air in the County using the EPA guidance of March 23, 2015. As such, their impact on the ozone NAAQS is very minimal.

Regarding ES–RICE, the pollutants which are relevant to NAAQS attainment are ozone, $NO_X$, PM, CO and $SO_2$. As exhibited in the tables above, Albuquerque and Bernalillo County have maintained attainment for the NAAQS for ozone, $NO_X$, PM, CO and $SO_2$ for the entire time during which federal emission controls for ES–RICE have been in effect. The Department's proposal will not change those controls, it will not impact emissions from these sources, and will not interfere with attainment of any NAAQS. Emissions from ES–RICE will not interfere with NAAQS attainment because they are very low and because they contribute so little to the total amount of emissions of concern which are relevant for NAAQS compliance, particularly when examined in context with the total emissions throughout the County. The applicable regulations only permit ES–RICE to operate during emergencies, other than the few hours which are necessary to maintain the engines. In the Department's experience reviewing emission inventory reports for these sources, it estimates that the average hours of operation of each ES–RICE in Albuquerque-Bernalillo County is 24 hours per year. Comparing the annual hours of use of emergency engines (average 24 hours) versus regular engines which may operate year-round (8,760 hours), ES–RICE engines in Albuquerque-Bernalillo County would only produce about 0.3% of the impact that the same engine would produce if it were used continuously. When using an assumed maximum of 500 hours operation per year for each ES–RICE, EPA has previously concluded that a 500 hours per year limit would result in emissions of 5.5 tons per year or less from each ES–RICE. See 78 FR 15296 (March 11, 2013). Comparing this 500 hour per year limit to the Department's actual estimates of 24 hours per year, each ES–RICE will only emit about 0.26 tons per year. We also note that these engines are also subject to 40 CFR part 60 subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 CFR part 60, subpart JJJJ, Standards of Performance for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; and 40 CFR part 63 subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

Since Albuquerque and Bernalillo County have been in attainment for all the NAAQS for pollutants emitted by ES–RICEs during the entire period that federal and local emission controls for ES–RICE have been in effect, and those controls will remain in place, this proposal will not interfere with contained attainment of the NAAQS.

Based on these historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l) and is consistent with the provisions of 40 CFR 51.160(e) which provide state agencies the latitude to define the types and sizes of facilities, buildings, structures, or installations subject to review. We believe the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Accordingly, the EPA is proposing approval of these revisions under section 110 of the Act. The SIP submittal is available in the docket and from the EPA Region 6 office.

## IV. Proposed Action

We are proposing to approve the revisions to the City of Albuquerque—Bernalillo County Minor NSR program dated January 18, 2018. EPA is proposing to approve newly adopted MNSR permitting regulations which waive permitting requirements for eligible GDF and ES–RICE, and create new procedures for authorizing construction and modification of these eligible sources. The EPA has made the preliminary determination that the revisions are approvable because the submitted rules are adopted and submitted in accordance with the CAA and the EPA regulations at 40 CFR 51.160–51.164, and are consistent with the laws and regulations for Minor NSR permitting. 40 CFR 51.160(e) allows state and local agencies to identify the types and sizes of facilities, buildings, structures, or installations which will be subject to Minor NSR review provided that the submitted plan discusses a basis for determining which facilities will be subject to review. In addition, the plan must not contain any provisions which would violate section 110(l) of the CAA. The County stated in its submittal that requiring each exemption eligible GDF and ES–RICE to undergo the Minor NSR public notice and participation process had become an administrative burden. A large percentage of the County's time spent on permitting actions was spent on GDFs and ES–RICEs which are responsible for emitting minimal amounts of regulated pollutants when compared to the County's entire permitting universe. As explained in the 110(l) section of this proposed rule, these sources emit less than 1% of the total regulated air pollutant emissions within the County. As such, the County is seeking to streamline the process for these sources, so that it can spend more time on sources that emit regulated pollutants in greater, more consequential amounts. EPA finds that the County has provided a reasonable basis for determining that these facilities should not be subject to review. Further, as explained above, this revision will not result in a violation of CAA section 110(l). Therefore, under section 110 of the Act, and for the reasons presented above, the EPA proposes approval of the revisions to the County Minor NSR SIP identified in Table 7 below.

Table 7 summarizes the changes made to the County's SIP that are contained in the SIP revisions dated January 18, 2018. A summary of the EPA's evaluation of each substantive section and the basis for this action is discussed in Section III of this preamble.

TABLE 7—SUMMARY OF THE SIP SUBMITTAL IN THIS ACTION

| Section | Title | Submittal dates | Proposed action |
|---|---|---|---|
| **20.11.39 NMAC—PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES** | | | |
| 20.11.39.1 NMAC | Issuing Agency | 01/18/2018 | Approval. |
| 20.11.39.2 NMAC | Scope | 01/18/2018 | Approval. |

[2] See Attachment C, 2. Public Comment, of the County's January 18, 2018 submittal.

TABLE 7—SUMMARY OF THE SIP SUBMITTAL IN THIS ACTION—Continued

| Section | Title | Submittal dates | Proposed action |
|---|---|---|---|
| 20.11.39.3 NMAC | Statutory Authority | 01/18/2018 | Approval. |
| 20.11.39.4 NMAC | Duration | 01/18/2018 | Approval. |
| 20.11.39.5 NMAC | Effective Date | 01/18/2018 | Approval. |
| 20.11.39.6 NMAC | Objective | 01/18/2018 | Approval. |
| 20.11.39.7 NMAC | Definitions | 01/18/2018 | Approval. |
| 20.11.39.8 NMAC | Variances | 01/18/2018 | Approval. |
| 20.11.39.9 NMAC | Savings Clause | 01/18/2018 | Approval. |
| 20.11.39.10 NMAC | Severability | 01/18/2018 | Approval. |
| 20.11.39.11 NMAC | Documents | 01/18/2018 | Approval. |
| 20.11.39.12 NMAC | Permit Waivers | 01/18/2018 | Approval. |
| 20.11.39.13 NMAC | Requirements for Source Categories to Which Part 39 Applies | 01/18/2018 | Approval. |
| 20.11.39.14 NMAC | Air Quality Notification Application | 01/18/2018 | Approval. |
| 20.11.39.15 NMAC | AQN Application Review | 01/18/2018 | Approval. |
| 20.11.39.16 NMAC | Transfer of Prior Authorizations to AQNs | 01/18/2018 | Approval. |
| 20.11.39.17 NMAC | Compliance and Enforcement | 01/18/2018 | Approval. |
| 20.11.39.18 NMAC | Amending and Air Quality Notification | 01/18/2018 | Approval. |
| 20.11.39.19 NMAC | Fees | 01/18/2018 | Approval. |
| 20.11.39.20 NMAC | AQN Cancellation | 01/18/2018 | Approval. |
| **20.11.41 NMAC—CONSTRUCTION PERMITS** | | | |
| 20.11.41.2(E)(2) NMAC | Additional Permit Requirements | 01/18/2018 | Approval. |
| 20.11.41.2(G) NMAC | Permissive Waiver | 01/18/2018 | Approval. |

## V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Albuquerque/Bernalillo County, New Mexico regulations, as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. 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 EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 28, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2019–11662 Filed 6–4–19; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 84, No. 108

Wednesday, June 5, 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 Institute of Food and Agriculture

### Solicitation of Commodity Board Topics and Contribution of Funding Under the Agriculture and Food Research Initiative Competitive Grants Program

**AGENCY:** National Institute of Food and Agriculture (NIFA), USDA.

**ACTION:** Notice.

**SUMMARY:** NIFA is soliciting topics commodity board entities (Federal and State-level commodity boards, as defined below) are willing to co-fund equally with NIFA. To be considered for inclusion in future Agriculture and Food Research Initiative (AFRI) competitive grants program Requests for Applications (RFAs), topics must relate to the established priority areas of AFRI.

**DATES:** Commodity boards may submit topics at any time; however, all topics received by 5:00 p.m. EDT on August 5, 2019 will be considered for the fiscal year 2020 AFRI RFAs. Topics submitted by eligible commodity board entities after this date are not guaranteed review for fiscal year 2020, but will be considered for RFAs to be issued in future years. Frequently asked questions about commodity board topics are available on the NIFA website (*https://nifa.usda.gov/commodity-boards-frequently-asked-questions*).

**ADDRESSES:** You may submit topics by the following method: website: *https://nifa.usda.gov/webform/commodity-board-topic-submission/*. Instructions: The topic submission must be through the website form; emailed topics will not be accepted.

Required fields are marked. Topics submitted through this form will not be posted to a public site.

**FOR FURTHER INFORMATION CONTACT:** Mark Mirando; Phone: (202) 401–4336, or Email: *commodityboards@nifa.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

This Notice begins the fifth topic submission cycle to implement section 2(b)(4)(F) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 3157(b)(4)(F)), as added by section 7404 of the Agricultural Act of 2014, Public Law 113–79, which requires NIFA to ''establish procedures, including timelines, under which an entity established under a commodity promotion law (as such term is defined under section 501(a) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401(a))) or a State commodity board (or other equivalent State entity) may directly submit to [NIFA] for consideration proposals for requests for applications'' within the AFRI Program.

Stakeholder feedback gathered in previous years informed this Notice and the process NIFA is using to implement section 7404. This Notice invites entities established under a commodity promotion law or State commodity boards (or other equivalent State entities) to submit topics they are proposing for inclusion in fiscal year 2020 AFRI RFAs. Topics must relate to the established AFRI priority areas, which are: Plant health and production and plant products; animal health and production and animal products; food safety, nutrition, and health; bioenergy, natural resources, and environment; agriculture systems and technology; and agriculture economics and rural communities. A summary statement on AFRI is included below. To learn more about AFRI programs, including program priorities, typical award budget amounts, and examples of RFAs, please visit: *http://nifa.usda.gov/commodity-boards/.*

Commodity boards are those entities established under a commodity promotion law, as such term is defined under the Federal Agriculture Improvement and Reform Act of 1996, or a State commodity board or other equivalent State entity. See the **SUPPLEMENTARY INFORMATION** section of this Notice under the heading ''Eligibility for Submitting Topics'' for further information.

If, after NIFA's evaluation, proposed topics are accepted for inclusion, they will be incorporated into AFRI competitive grants program RFAs. As a condition of funding grants pertaining to a topic, NIFA will require an agreement with the commodity board to provide funds equal to the amount NIFA is contributing under the agreed upon topic.

This Notice invites topic submissions from commodity boards as defined above, outlines the process NIFA will use to evaluate the appropriateness of these topics for inclusion in AFRI RFAs, and describes the commitment required of commodity boards for NIFA to jointly fund competitively selected AFRI awards within a topic area submitted by the commodity boards.

### AFRI Program Overview

The AFRI program is the largest agricultural competitive grants program in the United States and a primary funding source for research, education, and extension projects that bring practical solutions to some of today's most critical societal challenges. AFRI programs impact all components of agriculture, including farm and ranch efficiency and profitability, bioenergy, forestry, aquaculture, rural communities, human nutrition, food safety, biotechnology, and genetic improvement of plants and animals.

In FY 2020, NIFA plans to solicit applications for AFRI funding opportunities in the six AFRI priority areas (Plant health and production and plant products; Animal health and production and animal products; Food safety, nutrition, and health; Bioenergy, natural resources, and environment; Agriculture systems and technology; Agriculture economics and rural communities). It is anticipated these will include the AFRI Foundational and Applied Science Program RFA and the AFRI Education and Workforce Development RFA. The annual AFRI Foundational and Applied Science Program RFA solicits grant applications focused predominately, but not exclusively, on fundamental scientific research addressing statutory priorities. The AFRI Education and Workforce Development RFA solicits grant applications for training K–14 teachers and administrators, undergraduate research and extension experiential learning fellowships, and pre- and post-doctoral fellowships. Any additional

AFRI RFAs made available in FY 2020 may be included in this solicitation.

**Eligibility for Submitting Topics**

Eligible commodity board entities are those established under a commodity promotion law, as such term is defined under 7 U.S.C. 7401(a), or a State commodity board (or other equivalent State entity). Language in 7 U.S.C. 7401(a) defines a ''commodity promotion law'' as ''a Federal law that provides for the establishment and operation of a promotion program regarding an agricultural commodity that includes a combination of promotion, research, industry information, or consumer information activities, is funded by mandatory assessments on producers or processors, and is designed to maintain or expand markets and uses for the commodity (as determined by the Secretary).'' 7 U.S.C. 7401(a) includes a list of such Federal laws.

A current list of approved entities is maintained at *http://nifa.usda.gov/commodity-boards/.* Additionally, entities eligible to submit topics include State commodity boards (or other equivalent State entities). This includes commodity boards authorized by State law; commodity boards that are not authorized by State law, but are organized and operate within a State and meet the requirements of their authorizing statute; and commodity boards that are authorized by a State and operate within the State for commodities that have no Federal program or oversight.

**Topic Submission Guidance and Procedures**

Topics may be submitted at any time and will be evaluated by NIFA on an annual basis. However, to guarantee consideration for the proposed fiscal year 2020 AFRI RFAs, topics must be received by 5:00 p.m. EDT on August 5, 2019.

Each topic proposed must be submitted using the online topic submission form provided at: *https://nifa.usda.govwebform/commodity-board-topic-submission/.* Commodity boards may propose support for multiple awards for each topic proposed. For each topic the commodity board proposes to support, the minimum amount contributed by the commodity board must align with budget guidance for each AFRI area *http://nifa.usda.gov/commodity-boards/* and comply with the maximum amount of $2.5 million allowed per topic. NIFA does not intend to match funding from a single commodity board in excess of $10 million in any year. Commodity boards should only submit topics that have a strong economic impact on their industry and U.S. agriculture, as a whole. Examples of topics typically supported by AFRI can be found at *http://nifa.usda.gov/commodity-boards/.*

If topics are accepted for funding, they will be incorporated into AFRI RFAs, and grants supporting the topic area may be awarded to AFRI eligible entities based on a competitive peer review process. As a condition of funding grants in a topic, NIFA will require an agreement by the commodity board to provide funds in an amount equal to the amount NIFA is contributing under the agreed upon topic. If a topic is selected for inclusion in an RFA, the commodity board submitting the topic will be required to maintain the confidentiality of the topic until the RFA is issued by NIFA. All commodity board funds and NIFA funds must be available at the time projects are selected for funding; awards are fully funded at the beginning of the award. Applications submitted under topics provided by commodity boards will be required to include a letter of support for co-funding from the commodity board that proposed the topic.

**Evaluation and Notification Process**

NIFA will screen proposed research topics to ensure eligibility of the submitting commodity boards. NIFA will also consult with USDA's Agricultural Marketing Service (AMS) to determine that submissions and proposed financial contributions are consistent with commodity promotion laws and commodity boards' charters, as applicable.

Commodity board topics are reviewed by an internal panel based on evaluation criteria developed using stakeholder input from commodity boards and other stakeholders from government, industry, and academe. Each topic will be evaluated based on alignment with one or more of the statutory AFRI priority areas (six AFRI priority areas authorized in the Farm Bill and described in 7 CFR 3430.309); alignment with the President's budget proposal for NIFA, as identified in the Department of Agriculture's annual budget submission; and alignment with the priority areas in the AFRI RFAs to be released by NIFA during the fiscal year for which the commodity board is proposing a topic for funding (for example, within the AFRI Foundational and Applied Science RFA, the AFRI Animal Health and Production and Animal Products' ''Animal Reproduction'' priority area).

From those topics received by 5:00 p.m. EDT on August 5, 2019, NIFA will select the topic(s) that were evaluated favorably for inclusion in the appropriate FY 2020 AFRI RFA. NIFA will notify commodity boards as to whether their topics will be included by September 3, 2019. Based on the evaluation, NIFA reserves the right to negotiate with commodity boards should changes be required to accept topics and funding amounts. Any changes to topics and funding amounts will be reviewed by USDA's AMS to determine if such changes are consistent with applicable commodity promotion laws.

NIFA will evaluate topics submitted after the August 5, 2019 deadline on an annual basis and notify commodity boards whether their topics will be included in subsequent RFAs within two weeks following the meeting of the internal evaluation panel, the date of which will be published on NIFA's Commodity Boards web page at (*http://nifa.usda.gov/commodity-boards/*).

Done at Washington, DC, this 15th day of May 2019.

**Steve Censky,**

*Deputy Secretary.*

[FR Doc. 2019–11723 Filed 6–4–19; 8:45 am]

BILLING CODE 3410–22–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Alaska Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Alaska Advisory Committee (Committee) to the Commission will be held at 3:00 p.m. Alaska Time (AKT) on Monday, June 10, 2019. The purpose of the meeting is for the Committee to vote on their final draft of the Alaska Native Voting Rights Report.

**DATES:** The meeting will be held on Monday, June 10, 2019 at 3:00 p.m. AKT.

*Public Call Information:* Dial: 800–685–8204, Conference ID: 5161533.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in

number: 800–685–8204, conference ID number: 5161533. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzljAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Welcome
II. Approval of Minutes From April 16 and May 13, 2019 Meetings
III. Review Report Draft
IV. Public Comment
V. Vote on Final Draft
VI. Next Steps
VII. Adjournment

*Exceptional Circumstance:* Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 31, 2019.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2019–11668 Filed 6–4–19; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### Census Bureau

### Proposed Information Collection; Comment Request; 2020 Census Post-Enumeration Survey Person Interview and Person Followup

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** To ensure consideration, written comments must be submitted on or before August 5, 2019.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*). You may also submit comments, identified by Docket number USBC–2019–0003, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin A. Pennington, U.S. Census Bureau, 4600 Silver Hill Road, Room 2H465, Washington, DC 20233, 301–763–8132 (or via the internet at *Robin.A.Pennington@census.gov*).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

As in previous censuses, the Post-Enumeration Survey (PES) for the 2020 Census will be conducted to provide estimates of census net coverage and components of census coverage for housing units and people living in housing units (see ''Definition of Terms'' paragraph below) for the United States and Puerto Rico, excluding remote Alaska. Group quarters (such as college/university student housing and correctional facilities) are out of scope, because populations can change significantly between census enumeration and PES enumeration operations. Remote Alaska is out of scope for the PES, because the person and housing unit populations can change significantly between census enumeration and PES enumeration operations. This makes it difficult to follow up on these populations after the census. For this reason, the Census Bureau's past post-enumeration surveys have never included remote Alaska. These coverage estimates provide insight into the quality and coverage of census results and operations.

As in the 2010 Census Coverage Measurement program, the 2020 PES operations and activities must be conducted separate from, and independent of, the other 2020 Census operations. The 2020 PES will use the dual-system estimation procedure, which depends on two independent systems of measurement. The independence between the PES and census operations is a fundamental necessity for dual-system estimation. The PES will comprise two independent enumerations of housing units and the household population within the same sample areas. These two enumerations are called the enumeration sample (E sample) and the population sample (P sample). The primary sampling unit is the Basic Collection Unit (BCU), which is the smallest unit of collection geography for 2020 Census operations. The E sample contains the list of housing units and people enumerated in the 2020 Census within a sample of BCUs. The P sample contains housing units and people in the same sample BCUs, but obtained independently from the census. The independent roster of housing units is obtained during the PES Independent Listing, while the independent roster of people is obtained during the PES Person Interview. The P sample housing units and people will be matched to all census housing units in

the sample BCUs and surrounding BCUs.

After the PES Independent Listing and matching operations have taken place, some cases with discrepancies between the PES Independent Listing and the 2020 Census will be identified to receive the PES Initial Housing Unit Followup interview. The results of this interview will again be matched to the list of census housing units. The results of the housing unit matching operations will be used to determine which PES and census addresses will be eligible to go to the PES Person Interview operation. After data collected from the PES Person Interview operation are matched to data collected by the census, some cases with discrepancies between the PES Person Interview and census will be sent for another interview called the PES Person Followup operation. Separate **Federal Register** Notices have already been issued for the PES Independent Listing operation (**Federal Register** Notice Vol. 83 FR 53849, pages 53849–53850) and PES Housing Unit Followup operations (**Federal Register** Notice Vol. 84 FR Doc No.: 2019–07611, pages 16000–16002).

For each sample BCU, the Census Bureau will conduct PES Person Interviews for selected housing units. During the PES Person Interview operation, interviewers will use a computer-assisted data collection instrument on a laptop to obtain information about the current residents of the sample housing unit, including those who may have moved into the selected housing unit since Census Day, April 1, 2020. The interviewer will also attempt to collect data on certain people who moved out of the sample housing unit between Census Day and the PES Person Interview operation. The Census Bureau will include nonmatched 2020 Census addresses in the PES Person Interview so that their 2020 Census enumeration status can be ascertained earlier than if they were included in the Person Followup operation that is conducted later in the PES processing.

The PES Person Interview operation will collect the information listed below only for people in housing units. The computer-assisted PES Person Interview instrument will collect the following information for the housing units included in this operation:

1. Roster of people living at the housing unit at the time of the PES Person Interview operation.

2. Census Day address information for people who moved into the sample address since Census Day.

3. Other addresses where a person may have been counted on Census Day.

4. Information to determine where each person should be counted on Census Day (according to Census residence criteria). For example, interviewers will probe for people who might have been left off the household roster, ask additional questions about people who moved from another address on Census Day to the sample address, and collect additional information for people with multiple addresses.

5. Demographic information for each person in the household on Interview Day or Census Day. These data are name, date of birth, age, Hispanic origin, race, and relationship to householder.

6. Name and above information for any person who has moved out of the sample address since Census Day (if known).

The PES Person Interview Reinterview is a quality control operation that will be conducted on about 15 percent of the PES Person Interview cases. The purpose of the PES Person Interview Reinterview is to confirm that the PES Person Interview interviewer conducted a PES Person Interview with a household member or a proxy respondent and to conduct the complete PES Person Interview as needed if the original interview seems questionable.

For each case identified during matching with discrepancies between the PES Person Interview and census, the Census Bureau will conduct a PES Person Followup for selected people in the household. During the PES Person Followup operation, interviewers will use paper questionnaires to obtain information about the selected people. The PES Person Followup operation will collect the information needed to determine where each selected person should be counted on Census Day (according to 2020 Census residence rules). For example, interviewers will probe for additional addresses where the person may have stayed during the year and dates of stay for each address.

The PES Person Followup Reinterview is a quality control operation that will be conducted on about 15 percent of the PES Person Followup cases. The purpose of the PES Person Followup Reinterview is to confirm that the PES Person Followup interviewer conducted a PES Person Followup interview with a household member or a proxy respondent and to conduct the complete PES Person Followup interview as needed if the original interview seems questionable.

## II. Method of Collection

The PES Person Interview and Reinterview operations will be conducted using a computer-assisted data collection instrument on a laptop. The PES Person Followup and Person Followup Reinterview operations will be conducted using a paper questionnaire. The PES Person Interview and Person Followup operations will be conducted through personal visit interviews while PES Person Interview Reinterview and Person Followup Reinterview will be conducted through personal visit and telephone interviews. The PES Person Interview and Reinterview operations will occur June 2020 through September 2020. The PES Person Followup and Person Followup Reinterview operations will occur February 2021 through March 2021.

A sample of approximately 190,000 housing units will be selected for the PES Person Interview operation, and 65,000 housing units will be selected for the PES Person Followup operation. The PES Person Interview Reinterview operation will contain 28,500 housing units, and the PES Person Followup Reinterview operation will contain 9,750 housing units.

*Definition of Terms*

*Components of Census Coverage*—The components of census coverage are correct enumerations, erroneous enumerations, whole-person imputations, and omissions. Correct enumerations are people or housing units that were correctly enumerated in the census. Erroneous enumerations are people or housing units that were enumerated in the census but should not have been enumerated. Examples of erroneous enumerations are duplicates, nonexistent housing units or people, and people or housing units that were enumerated in the wrong place. Omissions are people and housing units that were not enumerated in the census but should have been enumerated. Lastly, whole-person imputations are census records for which all of the demographic characteristics were imputed. Many of these imputations represent people in housing units with a known household count, but the Census Bureau did not obtain information about the people residing at the housing unit.

*Net Coverage*—Reflects the difference between the true population (which is estimated by the Post-Enumeration Survey) and the census count. If the census count was less than the actual number of people or housing units in the population, then there was an undercount. If the census count was more than the actual number of people or housing units in the population, then there was an overcount.

For more information about the Post-Enumeration Survey, please visit the following page of the Census Bureau's website: *https://www.census.gov/coverage_measurement/post-enumeration_surveys/.*

**III. Data**

*OMB Control Number:* 0607–XXXX.

*Form Numbers:* D–1301, D–1301(PR), D–1301.2, D–1301.2 (PR).

*Type of Review:* Regular submission.

*Affected Public:* Individuals or Households.

2020 CENSUS

| Operation | Estimated number of housing units | Estimated time per response (in minutes) | Total burden hours |
|---|---|---|---|
| PES Person Interview | 190,000 | 15 | 47,500 |
| PES Person Interview Reinterview | 28,500 | 15 | 7,125 |
| PES Person Followup | 65,000 | 15 | 16,250 |
| PES Person Followup Reinterview | 9,750 | 15 | 2,438 |
| Total | 293,250 | | 73,313 |

*Estimated Total Annual Burden Hours:* 73,313 hours.

*Estimated Total Annual Cost:* $0.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, U.S. Code, Sections 141 and 193.

**IV. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–11705 Filed 6–4–19; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–01–2019]**

### Foreign-Trade Zone (FTZ) 193—Clearwater, Florida; Authorization of Production Activity; Catalent Pharma Solutions, LLC (Pharmaceutical Products); St. Petersburg, Florida

On January 30, 2019, Catalent Pharma Solutions, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 193A, in St. Petersburg, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 2812, February 8, 2019). On May 30, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: May 30, 2019.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2019–11719 Filed 6–4–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–843]**

### Certain Lined Paper Products From India: Notice of Correction to Final Results of Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is correcting the final results of the administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. The period of review (POR) is September 1, 2016, through August 31, 2017.

**DATES:** Applicable June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson and Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3797 or (202) 482–1168, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 21, 2019, Commerce published in the **Federal Register** the *Final Results* of the 2016–2017 administrative review of the antidumping duty order on CLPP from India.[1] Commerce is correcting the *Final Results* to address the inadvertent omission of our final determination of no shipments with respect to two companies.

**Scope of the Order**

The merchandise covered by the order is certain lined paper products. For a complete description of the scope of this order, *see* the ''Scope of the Order'' section in the Issues and Decision Memorandum accompanying the *Final Results.*

[1] *See Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 23017 (May 21, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum.

**Correction to Final Results—Final Determination of No Shipments**

As noted in the *Preliminary Results,* we received timely no shipment claims from Lodha Offset Limited (Lodha) and Marisa International (Marisa).[2] On September 13, 2018, Commerce issued a no shipment inquiry to U.S. Customs and Border Protection (CBP) with respect to Lodha and Marisa and, on the same date, CBP confirmed Lodha and Marisa had no shipments of subject merchandise to the United States during the POR.[3] In the *Preliminary Results,* we preliminarily determined that Lodha and Marisa had no shipments of subject merchandise to the United States during the POR. We received no comments from interested parties with respect to the companies' no shipment claims. Therefore, because the record indicates that these two companies did not export or sell subject merchandise to the United States during the POR, we continue to find that Lodha and Marisa had no shipments of subject merchandise to the United States during the POR.

This correction to the *Final Results* is published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: May 30, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019–11713 Filed 6–4–19; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–095]**

### Aluminum Wire and Cable From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that aluminum wire and cable 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), for the period of investigation January 1, 2018, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Kathryn Turlo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–3870, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce published the notice of initiation of this investigation on October 18, 2018.[1]

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.[2] As a result of the tolling of deadlines, the revised deadline for the preliminary determination was April 9, 2019.

Commerce also published the notice of postponement of preliminary determination of this investigation on March 19, 2019.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Tariff Act of 1930, as amended (the Act), we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is May 29, 2019.

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum are included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

**Scope of the Investigation**

The products covered by this investigation are aluminum wire and cable from China. For a full description of the scope of this investigation, *see* ''Scope of the Investigation'' in Appendix I.

**Scope Comments**

In accordance with the Preamble to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding the scope of this investigation.[7] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice.* For a summary of the scope comments submitted to the record for this preliminary determination, *see* the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the mandatory respondents Hebei Huatong Wires and Cables Group Co., Ltd. (Huatong) and

[2] *See Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017,* 83 FR 50886 (October 10, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum at 7.

[3] *See* Memorandum, ''Certain Lined Paper Products from India,'' dated September 27, 2018, documenting CBP's confirmation of no shipments finding from the named companies; *see also* Commerce's No Shipment Inquiry, ''Re: No shipments inquiry for certain lined paper products from India produced and/or exported by various companies (A–533–843),'' message number 8256305, dated September 13, 2018.

[1] *See Aluminum Wire and Cable from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 52811 (October 18, 2018) (*Initiation Notice*); *see also* Memorandum, ''Antidumping Duty Investigation Initiation Checklist: Aluminum Wire and Cable from the People's Republic of China (China),'' dated October 11, 2018 (Initiation Checklist).

[2] *See* memorandum to the Record from 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, ''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.

[3] *See Aluminum Wire Cable from China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 84 FR 10032 (March 19, 2019).

[4] *Id.*

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Aluminum Wire and Cable from the People's Republic of China'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice.*

Shanghai Silin Special Equipment Co., Ltd. (Silin). Additionally, certain separate rate applicants failed to demonstrate their eligibility for a separate rate; thus, these companies are preliminarily found to be part of the China-wide entity.[8] Furthermore, we find that the China-wide entity's lack of participation, including the failure of certain parts of the China-wide entity to respond to Commerce's questionnaires, constitute circumstances under which it is reasonable to conclude that the China-wide entity as a whole, including Huatong and Silin, failed to cooperate to the best of its ability to comply with Commerce's requests for information. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

**Separate Rate**

In proceedings involving non-market economy (NME) countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.[9] It is Commerce's policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*).[10] Commerce preliminarily determines that the evidence placed on the record in this investigation by Changfeng Wire & Cable Co., Ltd. (Changfeng) and Wuxi Jiangnan Cable Co., Ltd. (Wuxi Jiangnan) demonstrates an absence of *de jure* and *de facto* government control. Because Commerce preliminarily determined the estimated weighted-average dumping margin based on total adverse facts available (AFA) for the mandatory respondents in this investigation in accordance with section 776 of the Act, the estimated weighted-average dumping margin determined for the separate rate companies is a simple average of the Petition rates.[11] For a full description of the methodology underlying Commerce's preliminary decision regarding separate rates, *see* the Preliminary Decision Memorandum.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter | Producer | Estimated weighted-average dumping margin (percent) | Estimated weighted-average dumping margin adjusted for export subsidies (*i.e.,* cash deposit rate) (percent) |
|---|---|---|---|
| Changfeng Wire & Cable Co., Ltd | Changfeng Wire & Cable Co., Ltd | 58.51 | 58.36 |
| Wuxi Jiangnan Cable Co., Ltd | Wuxi Jiangnan Cable Co., Ltd | 58.51 | 58.36 |
| China-wide entity * | | 63.47 | 63.32 |

* Includes the mandatory respondents, Huatong and Silin.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit based on the rate indicated in the chart above as follows: (1) For the producers/exporters listed in the table above, the cash deposit rate is equal to the rate listed in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the rate established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the 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 has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the ''Preliminary Determination'' section's chart of estimated weighted-average dumping margins, above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

**Disclosure**

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if

[8] The separate rate applicants preliminarily not receiving a separate rate are Ahcof International Development Co., Ltd. (Ahcof) and Jiangsu Ganghong Electric Wire & Power Cable Co., Ltd. (Jiangsu). For a full description of the methodology underlying Commerce's preliminary decision, *see* the Preliminary Decision Memorandum.

[9] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[10] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

[11] *See* letter from the petitioners, ''Aluminum Wire and Cable from China: Antidumping and Countervailing Duty Petitions,'' dated September 21, 2018, and letter from the petitioners, ''Aluminum Wire and Cable from China: Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated September 28, 2018 (collectively, the Petition).

there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total AFA to the individually examined companies in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based on a rate alleged in the Petition, as included in the Initiation Checklist, there are no calculations to disclose.

## Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines that each of the mandatory respondents have been uncooperative, verification will not be conducted.

## Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

## Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioners. Section CFR 351.210(e)(2) of Commerce's regulations requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

In April 2019, pursuant to 19 CFR 351.210(b) and (e), Huatong and Silin requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[13] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) Our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the **Federal Register**, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

[13] *See* letter from Huatong, ''Aluminum Wire and Cable from the People's Republic of China—Request for Extension of Final Determination and Provisional Measures,'' dated April 11, 2019; and letter from Silin, ''Aluminum Wire and Cable from People's Republic of China—Request for Extension of Final Determination and Provisional Measures,'' dated April 10, 2019.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 29, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### Scope of the Investigation

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1,000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1,000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN–2, XHHW–2, USE, USE–2, RHH, RHW, or RHW–2, and also conform to Underwriters Laboratories (UL) standards UL–44, UL–83, UL–758, UL–854, UL–1063, UL–1277, UL–1569, UL–1581, or UL–4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures

V. Scope Comments
VI. Scope of the Investigation
VII. Discussion of the Methodology
A. Non-Market Economy Country
B. Surrogate Country and Surrogate Value Comments
C. Separate Rates
D. The China-wide Entity
E. Application of Facts Available with Adverse Inferences
VIII. Adjustment Under Section 777(A)(f) of the Act
IX. Adjustments to Cash Deposit Rates for Export Subsidies
X. Verification
XI. Conclusion

[FR Doc. 2019–11712 Filed 6–4–19; 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), Commerce.

*Title:* Fisheries Certificate of Origin.

*OMB Control Number:* 0648–0335.

*Form Number(s):* NOAA Form 370.

*Type of Request:* Regular submission, extension of a current information collection.

*Number of Respondents:* 530.

*Average Hours per Response:* 25 minutes.

*Burden Hours:* 5,417.

*Needs and Uses:* This request is for an extension of a current information collection. The information required by the International Dolphin Conservation Program Act, amendment to the Marine Mammal Protection Act, is needed to: (1) Document the dolphin-safe status of tuna import shipments; (2) verify that import shipments of fish were not harvested by large-scale, high seas driftnets; and (3) verify that tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers and processors.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Submission is required for each shipment of frozen and/or processed tuna and tuna products that enters the United States.

*Respondent's Obligation:* Importing respondents are required to submit the form electronically to U.S. Customs and Border Protection before or at the time of importation via the Automated Commercial Environment. Domestic processors submit the forms monthly via email.

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. 2019–11640 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH057**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Northeast Trawl Advisory Panel (NTAP) of the Mid-Atlantic Fishery Management Council will hold a meeting.

**DATES:** The meeting will be held on Friday, June 21, 2019, beginning at 9 a.m. and conclude by 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held at the Northeast Fisheries Science Center office located on 28 Tarzwell Dr., Narragansett, RI 02882 and available via webinar (*http://www.mafmc.org/ntap*).

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to: (1) Conduct new member introductions; discuss (2) the F/V Karen Elizabeth gear performance study plan review; (3) updates on the flume tank experiment; (4) updates of door testing on the NOAA Bigelow; (5) additional gear performance funds; and 6) long term NTAP plans and other business.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

Dated: May 31, 2019.

**Rey Israel Marquez,**

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

[FR Doc. 2019–11737 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH044**

### Fisheries of the Gulf of Mexico and the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 64 Data Workshop for Gulf of Mexico and South Atlantic yellowtail snapper.

**SUMMARY:** The SEDAR 64 assessment process of Gulf of Mexico and South Atlantic yellowtail snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR 64 Data Workshop will be held from 9 a.m. on June 25, 2019, until 5 p.m. on June 27, 2019.

**ADDRESSES:**

*Meeting address:* The SEDAR 64 Data Workshop will be held at the Hilton St. Petersburg Bayfront, 333 1st Street S, St. Petersburg, FL 33701; telephone: 1–800–445–8667.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA

Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop are as follows:

1. An assessment data set and associated documentation will be developed during the workshop.
2. Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

*Note:* The times and sequence specified in this agenda are subject to change.

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

Dated: May 31, 2019.

**Rey Israel Marquez,**

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

[FR Doc. 2019–11735 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH049**

### South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council will hold a South Atlantic Ecopath Model development coordination meeting.

**DATES:** The model development coordination meeting will take place July 24, 2019, from 1:30 p.m. to 4:30 p.m., and July 25, 2019, from 9 a.m. to 4 p.m.

**ADDRESSES:**

*Meeting address:* The meetings will be held at Florida Fish and Wildlife Research Institute (FWRI), Florida Fish and Wildlife Conservation Commission, 100 8th Ave. SE, St. Petersburg, FL 33701.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The model coordination meeting is open to the public. Additional information including meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/* as it becomes available.

The group will: Develop recommendations on collection of diet information for the Ecopath with Ecosim (EwE) model for the South Atlantic Region to provide priority research need recommendations for fishery programs supporting EwE refinement; and prioritize mapping needs and spatial layers that would support development/refinement of Ecospace for the SA EwE model.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: May 31, 2019.

**Rey Israel Marquez,**

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

[FR Doc. 2019–11736 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XH058**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 58 Assessment Milestone 1 Webinar for Atlantic Cobia.

**SUMMARY:** The SEDAR 58 assessment of the Atlantic stock of Cobia will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 58—Assessment Milestone 1 Webinar has been scheduled for July 17, 2019, from 9 a.m. to 12 p.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kathleen Howington at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment Milestone 1 webinar are as follows:

- Consider methods and configuration options for models;
- Recommend assessment methods (*i.e.,* model types) to pursue for potential base model configuration;
- Identify likely issues to be addressed and evaluated in developing the base model.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

*Note:* The times and sequence specified in this agenda are subject to change.

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

Dated: May 31, 2019.

**Rey Israel Marquez,**

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

[FR Doc. 2019–11738 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## 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:* Economic Analysis of Shoreline Treatment Options for Coastal New Hampshire.

*OMB Control Number:* 0648–xxxx.

*Form Number(s):* None.

*Type of Request:* Regular (new collection).

*Number of Respondents:* 4,633.

*Average Hours per Response:* 0.27.

*Burden Hours:* 1,248.

*Needs and Uses:* This request is for a pretest of a new data collection to benefit the National Oceanic and Atmospheric Administration (NOAA), Office of Coastal Management (OCM), and decision-makers on the state and local level in New Hampshire. The New Hampshire Coastal Program (NHCP) has prioritized living shoreline assessment and implementation in its five-year strategy to enhance coastal management (309 Strategy, 2015) and set a long-term goal to develop a Coastal Shoreline Management Plan (CSMP) for New Hampshire. NOAA will collect social, economic, and behavioral data pursuant to the Coastal Zone Management Act (CZMA).

Questions will explore such issues as familiarity with weather and climate effects and adaptation methods, place attachment, and opinions on shoreline treatment options. The final collection will support the development of a CSMP for New Hampshire, provide information to help inform local coastal zone management and planning, and establish a baseline for future monitoring of NOAA's success in meeting its mandates and obligations.

*Affected Public:* Individuals and households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

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. 2019–11638 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG047**

### Marine Mammals; File No. 21321

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that Pacific Whale Foundation (300 Ma'alaea Rd., Suite 211, Wailuku, HI 96793; Responsible Party: Stephanie Stack) has applied for an amendment to Scientific Research Permit No. 21321.

**DATES:** Written, telefaxed, or email comments must be received on or before July 5, 2019.

**ADDRESSES:** The application and related documents are available for review by

selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 21321 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Courtney Smith or Amy Hapeman, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 21321 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 21321, issued on April 23, 2018 (83 FR 21765), authorizes the permit holder to take false killer whales *Pseudorca crassidens* (including the endangered Main Hawaiian Islands insular false killer whale distinct population segment) by vessel and unmanned aerial surveys within near- and off-shore waters of the Maui 4-island region (Hawaii) to assess their distribution, abundance, social organization, population structure, population size, foraging, reproduction, movements, habitat use, body condition, and behavior.

The permit holder is requesting the permit be amended to include authorization to take an additional 20 cetacean species by the same aerial and vessel research activities for the same purposes: Bottlenose (*Tursiops truncatus*); Pantropical spotted (*Stenella attenuata*), Risso's (*Grampus griseus*), Rough-toothed (*Steno bredanensis*), Short-beaked common dolphin (*Delphinus delphis*), Spinner (*Stenella longirostris*), and Striped (*Stenella coeruleoalba*) dolphins; and Blainville's beaked (*Mesoplodon densirostris*), Bryde's (*Balaenoptera brydei*), Cuvier's beaked (*Ziphius cavirostris*), Dwarf sperm (*Kogia sima*), Fin (*Balaenoptera physalus*), Humpback (*Megaptera novaeangliae*), Killer (*Orcinus orca*), Melon-headed (*Peponocephala electra*), Minke (*Balaenoptera acutorostrata*), Pygmy killer (*Feresa attenuata*), Pygmy sperm (*Kogia breviceps*), Short-finned pilot (*Globicephala macrorhynchus*), and Sperm whales (*Physeter microcephalus*).

Additionally, the applicant requests to add a new procedure to take all authorized and requested species by close approach using a small, underwater remote operated vehicle (ROV). Take numbers for each species and take method are outlined in the amendment request take table.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2019.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2019–11689 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; NMFS Implementation of International Trade Data System

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 5, 2019.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Rogers at (301) 427–8375 or *christopher.rogers@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

*Type of Review:* Regular submission (revision and extension of a current information collection).

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109–347) requires all Federal agencies with a role in import admissibility decisions to collect information electronically through the International Trade Data System (ITDS). The Department of the Treasury has the U.S. Government lead on ITDS development and Federal agency integration. U.S. Customs and Border Protection (CBP) developed the Automated Commercial Environment (ACE) as an internet-based system for the collection and dissemination of information for ITDS. The Office of Management and Budget (OMB), through its e-government initiative, oversees Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper-based reporting systems to electronic information collection.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export, and transportation-related decision-making process. Agencies also use trade data to monitor and report on trade activity. NMFS is a partner government agency in the ITDS project because of its role in monitoring the trade of certain fishery products. Electronic collection of seafood trade data through a single portal has resulted in an overall reduction of the public reporting burden and the agency's data collection costs, has improved the timeliness and accuracy of admissibility decisions, and has increased the

effectiveness of applicable trade restrictive measures.

NMFS is responsible for implementation of trade measures and monitoring programs for fishery products subject to the documentation requirements of Regional Fishery Management Organizations (RFMO) and/or documentation requirements under domestic laws. RFMOs are international fisheries organizations, established by treaties, to promote international cooperation to achieve effective and responsible marine stewardship and ensure sustainable fisheries management. The United States is a signatory to many RFMO treaties, and Congress has passed implementing legislation to carry out U.S. obligations under those treaties, including trade measures to support conservation. Trade measures and monitoring programs enable the United States to exclude products that do not meet the RFMO criteria for admissibility to U.S. markets.

Pursuant to domestic statutory authorities and/or multilateral agreements, NMFS has implemented a number of monitoring programs to collect information from the seafood industry regarding the origin of certain fishery products. The purpose of these programs is to determine the admissibility of the products in accordance with the specific criteria of the trade measure or documentation requirements in effect.

The three NMFS trade monitoring programs included in the OMB information collection approved under Control Number 0648–0732 are the Highly Migratory Species International Trade Program (HMS ITP) which regulates trade in specified commodities of tuna, swordfish, billfish, and shark fins; the Antarctic Marine Living Resources (AMLR) trade program which regulates trade in Antarctic and Patagonian toothfish and other fishery products caught in the area where the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) applies; and the Tuna Tracking and Verification Program (TTVP), which regulates trade in frozen and/or processed tuna products (refer to 50 CFR 216.24(f)(2)(iii) for a complete list).

Separately, NMFS received approval from OMB for the Seafood Import Monitoring Program (SIMP) under Control Number 0648–0739. That program has been implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 307(1)(Q) of the MSA prohibits the importation of fish or fish products that have been harvested in violation of a foreign law or regulation, or in contravention of a binding conservation measure of an RFMO to which the United States is a contracting party. Under SIMP, information on the harvest event must be submitted in ACE as part of the entry filing for designated fish products to allow NMFS to determine that the fish were lawfully acquired and are therefore admissible into U.S. commerce. In 2019, NMFS included shrimp and abalone entries in SIMP, and received OMB approval for the additional reporting burden for shrimp and abalone entries under a separate Control Number (0648–0776).

Generally, these trade monitoring programs are similar and require anyone who intends to import, export, and/or re-export regulated species to: Obtain a permit from NMFS; obtain documentation on the flag-nation authorization for the harvest from the foreign exporter; and submit this information to NMFS. Depending on the commodity, specific information may also be required. For example, the flag state of the harvesting vessel, the ocean area of catch, the fishing gear used, the harvesting vessel name, and details and authorizations related to harvest, landing, transshipment and export. In renewing collection 0648–0732, NMFS will also request that OMB merge all the trade monitoring programs under one collection, thereby incorporating the reporting burdens associated with collections 0648–0739 and 0648–0776 within the scope of 0648–0732.

## II. Method of Collection

The initial requirement for U.S. entities trading in the reportable commodities is to apply for an International Fisheries Trade Permit (IFTP). To obtain the IFTP, U.S. importers, exporters, and re-exporters of seafood products covered under the TTVP, AMLR, and HMS ITP programs would be required to electronically submit their application and fee for the IFTP via the National Permits System available online at: *https://fisheriespermits.noaa.gov/npspub/pub_cmn_login/index_live.jsp*).

Currently, the TTVP, AMLR, HMS ITP and SIMP regulations require submission of specific information and documentation for trade monitoring. The IFTP holder, or his or her representative (*e.g.,* customs broker), would need to electronically provide CBP via ACE with certain data sets (*i.e.,* a subset of the information required to be kept as records under the TTVP, AMLR, HMS ITP or SIMP programs) and scanned images of documentation for each applicable trade transaction. NMFS has provided detailed information regarding submission of data sets and documentation in a compliance guide for industry which has been posted online at: (*https://www.iuufishing.noaa.gov/Portals/33/SIMPComplianceGuide2018rev.pdf?ver=2018-12-11-172442-553*).

The format for the data sets has been designated for each of the three programs and specified in the following documents that were jointly developed by NMFS and CBP and made available online to affected entry filers by CBP (*http://www.cbp.gov/trade/ace/catair*):

CBP and Trade Automated Interface Requirements—Appendix PGA

CBP and Trade Automated Interface Requirements—PGA Message Set

Automated Broker Interface (ABI) Requirements—Implementation Guide for NMFS

## III. Data

*OMB Control Numbers:* 0648–0732; 0648–0739; 0648–0776.

*Form Number(s):* None.

*Type of Review:* Regular submission; revision and extension of a current information collection.

*Affected Public:* Business or other for-profit organizations; Federal government.

*Estimated Number of Respondents:* 1,800 per year.

*Estimated Time per Response:* 3 hours.

*Estimated Total Annual Burden Hours:* 365,000 hours.

*Estimated Total Annual Cost to Public:* $2,900,000.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019–11639 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–C–2019–0021]**

### Patent and Trademark Public Advisory Committees

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice and request for nominations for the Patent and Trademark Public Advisory Committees.

**SUMMARY:** On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (''1999 Act''), which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified in the United States Code). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the requirement that the terms of the USPTO Public Advisory Committee members be realigned by 2014, so that December 1 be used as the start and end date, with terms staggered so that each year three existing terms expire and three new terms begin on December 1. Through this Notice, the USPTO is requesting nominations for up to three (3) members of the Patent Public Advisory Committee, and for up to three (3) members of the Trademark Public Advisory Committee, for terms of three years that begin on December 1, 2019.

**DATES:** Nominations must be postmarked or electronically transmitted on or before July 12, 2019.

**ADDRESSES:** Persons wishing to submit nominations should send the nominee's resumé by postal mail to Christopher Shipp, Acting Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450 or by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee, or *TPACnominations@uspto.gov* for the Trademark Public Advisory Committee.

**FOR FURTHER INFORMATION CONTACT:** Christopher Shipp, Acting Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at (571) 272–8600.

**SUPPLEMENTARY INFORMATION:** The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively (35 U.S.C. 5); and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO. *Id.*

**Advisory Committees**

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (''Secretary'') and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States and are chosen to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee. Members must represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. The Committees must include individuals with ''substantial background and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *https://obamawhitehouse.archives.gov/blog/2009/09/23/lobbyists-agency-boards-and-commission*s (Sept. 23, 2009)); cf. E.O. 13490, 74 FR 4673 (Jan. 21, 2009) (While Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

**Procedures and Guidelines of the Patent and Trademark Public Advisory Committees**

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a three-year term that begins on December 1, 2019, and ends on December 1, 2022. As required by the 1999 Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day (including travel time) while the member is attending meetings or engaged in the business of that Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code.

**Applicability of Certain Ethics Laws**

Public Advisory Committee Members are Special Government Employees within the meaning of section 202 of title 18 of the United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that came before the member's committee and that involved at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain

closely related entities) has a financial interest. 18 U.S.C. 208.

• Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

**Meetings of the Patent and Trademark Public Advisory Committees**

Meetings of each Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, on-line through the internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Committee business through the internet.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2019–11724 Filed 6–4–19; 8:45 am]

**BILLING CODE 3510–16–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2019–0030]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Generic Information Collection Plan for the Collection for Qualitative Consumer Education, Engagement and Experience Information Collections.''

**DATES:** Written comments are encouraged and must be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

• *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2019–0030 in the subject line of the message.

• *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

• *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

*Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575 or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Generic Information Collection Plan for the Collection for Qualitative. Consumer Education, Engagement and Experience Information Collections.

*OMB Control Number:* 3170–0036.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Individuals or households, State, Local, or Tribal governments; Private Sector.

*Estimated Number of Annual Respondents:* 4,000.

*Estimated Total Annual Burden Hours:* 2,000.

*Abstract:* Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1021(c), one of the Bureau's primary functions is to conduct financial education programs. The Bureau seeks to obtain approval of a generic information collection plan to collect qualitative data on effective financial education strategies and consumer experiences in the financial marketplace from a variety of respondents, including financial educators and consumers. The Bureau will collect this information through a variety of methods, including in-person meetings, interviews, focus groups, qualitative surveys, online discussion forums, social media polls, and other qualitative methods as necessary. The information collected through these processes will increase the Bureau's understanding of consumers' financial experiences, financial education and empowerment programs, and practices that can improve financial decision-making skills and outcomes for consumers. This information will also enable the Bureau to better communicate to consumers about the availability of Bureau tools and resources that consumers can use to make better informed financial decisions.

*Request for Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 30, 2019.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2019–11644 Filed 6–4–19; 8:45 am]

**BILLING CODE 4810–AM–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2019–0031]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to reinstate with change a previously approved collection titled, ''Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.''

**DATES:** Written comments are encouraged and must be received on or

before August 5, 2019 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2019–0031 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

*Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.

*OMB Control Number:* 3170–0032.

*Type of Review:* Reinstatement with change of a previously approved collection.

*Affected Public:* Businesses and other For Profit Entities.

*Estimated Number of Annual Respondents:* 1,065.

*Estimated Total Annual Burden Hours:* 1,146.

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act requires or authorizes the Bureau to implement new consumer protections in the offering or provision of certain consumer financial products and services. The information collected is required in order to effectively incorporate information from providers concerning compliance costs and other effects of regulations as part of the information base for potential rulemakings and prospective and retrospective regulatory burden analyses. The Bureau is modifying this generic information collection plan to provide for public notice and opportunity to comment to OMB for each request submitted under this plan.

*Request for Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 30, 2019.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2019–11654 Filed 6–4–19; 8:45 am]

BILLING CODE 4810–AM–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2009–0044]**

## Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Cigarette Lighters

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in regulations implementing the Safety Standard for Cigarette Lighters, approved previously under OMB Control No. 3041–0116. The CPSC will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

**DATES:** Submit written or electronic comments on the collection of information by August 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2009–0044, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number CPSC–2009–0044, into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Bretford Griffin, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** The CPSC seeks to renew the following currently approved collection of information:

*Title:* Safety Standard for Cigarette Lighters.

*OMB Number:* 3041–0116.

*Type of Review:* Renewal of collection.

*Frequency of Response:* On occasion.

*Affected Public:* Manufacturers and importers of cigarette lighters.

*Estimated Number of Respondents:* In 2018, 42 firms submitted information to the CPSC on 231 lighter models. There were four new lighter models and 227 lighters that were comparable to models previously tested (''comparison lighters'').

*Estimated Time per Response:* The burden associated with the standard includes the time and cost spent testing and maintaining the test records, either by the firm or by outside contractors. If tests are conducted in-house, testing new lighter models is expected to take about 90 hours per model. The total testing time for the four models, would be 360 hours. Recordkeeping consists of two separate components: recordkeeping for new lighter models, and recordkeeping for comparison lighters.

*New Lighter Models*—The time burden for recordkeeping for new lighter models is estimated at 20 hours per model. The total time for recordkeeping is estimated to be 80 hours (20 hours × 4 models). If tests are conducted in-house, for each new model, product testing for each firm would take approximately 90 hours per model, for a total of 360 hours (90 hours × 4 models).

*Comparison Lighters*—Firms may also submit comparison lighters to demonstrate compliance with the standard. In 2018, 227 comparison lighters were reported to the CPSC. While firms bear no testing costs for comparison lighters, the burden hours for recordkeeping has been estimated at 3 hours per model. Thus, an estimated 681 hours (227 models × 3 hours) is estimated for recordkeeping for comparison lighters.

*Reporting Requirements*—Approximately 1 hour will be required for firms to submit forms to CPSC per model, for a total annual reporting burden on 231 hours (231 models × 1 hour).

*Total Estimated Annual Burden:* The annual total number of hours could be as high as 1,352 hours (360 testing + 761 recordkeeping hours + 231 reporting hours) per year. If some firms elect to outsource testing of new models, it could be less. The CPSC estimates the total cost for firms to test, and prepare, maintain, and submit records to the CPSC in compliance with the lighter regulation would be in the range of $59,064 to $115,929, depending upon the test method chosen.

*General Description of Collection:* In 1993, the CPSC issued the Safety Standard for Cigarette Lighters (16 CFR part 1210) under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard requires certain test protocols, as well as recordkeeping and reporting requirements. 16 CFR part 1210, subpart B. In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

**Request for Comments**

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2019–11652 Filed 6–4–19; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Policy Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Policy, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Policy Board (DPB) will take place. This meeting will be closed to the public.

**DATES:**

Day 1—Closed to the public Monday, June 17, 2019 from 8:10 a.m. to 5:00 p.m.

Day 2—Closed to the public Tuesday, June 18, 2019 from 8:00 a.m. to 12:00 p.m.

**ADDRESSES:** The closed meeting will be held at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

**FOR FURTHER INFORMATION CONTACT:** Monica Bacheler, (703) 571–9234 (Voice), 703–697–8606 (Facsimile), *monica.t.bacheler.civ@mail.mil* (Email). Mailing address is 2000 Defense Pentagon, Washington, DC 20301–2000.

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Policy Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its June 17 through 18, 2019 meeting of the Defense Policy Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), the Government in the Sunshine Act (''the Sunshine Act'') (5 U.S.C. 552b), and the General Services Administration's Federal Advisory Committee Management; Final Rule (''the FACA Final Rule'') (41 CFR 101–6 and 102–3).

*Purpose of the Meeting*: To obtain, review, and evaluate classified information related to the DPB's mission to advise on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

*Agenda:* On June 17 and 18, the DPB will have Secret level or higher discussions on national security issues regarding competition below armed conflict. On June 17, topics and speakers include: (1) An intel community baseline from the Defense Intelligence Agency and Central Intelligence Agency of actions in this space; (2) think tank perspectives from Mike Mazaar at RAND and Ambassador James Herbst from the Atlantic Council; (3) policy perspectives from Owen West, David Helvey and Laura Cooper of the Office of the Secretary of Defense for Policy; (4) Joint Staff, J5 perspectives on

what they are seeing on the ground and what plans and tools are being employed to counter operations in this space; (5) Admiral Munsch from the Navy N3/N5 will offer his perspectives; (6) Mr. Vayl Oxford from DTRA will provide insights on their work in this space; and (8) Mr. Shawn Powers will discuss public messaging from the perspective of the U.S. Global Agency for Global Media and DoD, State Public Affairs, and the National Security Council will provide their points of view on messaging. On June 18 the DPB will deliberate on 5G and competition below armed conflict recommendations and report out on the same to the Acting Secretary of Defense, Patrick Shanahan.

*Meeting Accessibility:* In accordance with section 10(d) of the FACA, and the FACA Final Rule (41 CFR 102–3.155), the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Section 552b(c)(1) of the Sunshine Act and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or higher classified material.

*Committee's Designated Federal Officer or Point of Contact:* Monica Bacheler, *monica.t.bacheler.civ@mail.mil.*

*Written Statements:* In accordance with to 41 CFR 102–3.105(j) and 102–3.140(c) and section 10(a)(3) of the FACA, the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer (DFO), which is listed in this notice or can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: May 30, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019–11628 Filed 6–4–19; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities

**AGENCY:** Office of Undersecretary, President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

**ACTION:** Announcement of an open meeting.

**SUMMARY:** This notice sets forth the agenda for the June 13, 2019, meeting of the President's Board of Advisors on Historically Black Colleges and Universities (PBA) and provides information to members of the public about the meeting. Notice of the meeting is required by § 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend. This notice is being posted less than 15 calendar days due to significant logistical challenges in securing an appropriate meeting venue.

**DATES:** The PBA meeting will be held on June 13, 2019, from 10:00 a.m. to 2:00 p.m. E.D.T. at the U.S. Department of Education, 400 Maryland Avenue SW, Barnard Auditorium, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Sedika Franklin, Designated Federal Official, U.S. Department of Education, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW, Washington, DC 20202; telephone: (202) 453–5634 or (202) 453–5630, or email *sedika.franklin@ed.gov.*

**SUPPLEMENTARY INFORMATION:**

*PBA's Statutory Authority and Function:* The PBA is established by Executive Order 13779 (February 28, 2017) and is continued by Executive Order 13811 (September 29, 2017). The PBA is governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) which sets forth standards for the formation and use of advisory committees. The purpose of the PBA is to advise the President, through the White House Initiative on Historically Black Colleges and Universities (Initiative), on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The PBA shall advise the President in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

*Meeting Agenda:* The meeting agenda will include, welcoming remarks; a discussion of the PBA's function and mission; federal presentations; and group discussion. The public comment period will begin immediately following the conclusion of the federal reports.

Members of the public who wish to listen to the meeting via telephone may dial (202) 991–0393, 55000552#.

Members of the public who wish to attend the meeting in person must submit an RSVP by email to the *whirsvps@ed.gov* mailbox. RSVPs must be received by close of business on June 11, 2019. In the subject line of the email, insert ''Meeting RSVP: President's Board of Advisors on Historically Black Colleges and Universities.'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) requesting to attend.

*Submission of Requests to Make an Oral Comment:* There are two methods the public may use to provide an oral comment pertaining to the work of the PBA at the June 13, 2019 meeting.

*Method One:* Submit a request by email to the *whirsvps@ed.gov* mailbox. Please do not send materials directly to PBA members. Requests must be received by June 11, 2019. In the subject line of the email request insert ''Oral Comment Request: (Organization Name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) requesting to speak, and a brief summary (not to exceed one page) of the principal point(s) to be made. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak for three minutes during the public comment period.

*Method Two:* Register at the meeting location on June 13, 2019, to make an oral comment during the public comment period. The requestor must provide his or her name, title, organization/affiliation, mailing address, email address, and telephone number. Individuals will be selected on a first-come, first-served basis. If selected, each commenter will have an opportunity to speak for three minutes.

All oral comments made will become part of the official record of the PBA. Similarly, written materials distributed during oral presentations will become part of the official record of the meeting.

*Submission of Written Comments:* Members of the public may submit written comments, which will be read during the public comment segment of the meeting. Written comments received by June 11, 2019, in the *whirsvps@ed.gov* mailbox will be read during the meeting. In the subject line insert ''Written Comments: Public Comment.'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) submitting the comment. Written comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message email) or provided in the body of an email message. Please do not send material directly to PBA members. In general, written comments pertaining to the work of the PBA may be sent to *oswhi-hbcu@ed.gov.*

*Access to Records of the Meeting:* The Department will post the official transcript of the meeting on the PBA website 90 days after the meeting at *www.ed.gov.* Pursuant to the Federal Advisory Committee Act (FACA), the public may also inspect the materials at 400 Maryland Avenue SW, Washington, DC, by emailing *oswhi-hbcu@ed.gov* or by calling (202) 453–5634 to schedule an appointment.

*Reasonable Accommodations:* The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by June 6, 2019. We will attempt to meet all requests received by the due date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Electronic Access to this Document:* The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Authority:* Executive Order 13779, continued by Executive Order 13811.

**Diane Auer Jones,**

*Principal Deputy Under Secretary delegated the duties of Under Secretary and Assistant Secretary for Postsecondary Education.*

[FR Doc. 2019–11730 Filed 6–4–19; 8:45 am]

BILLING CODE P

## DEPARTMENT OF EDUCATION

## Applications for New Awards; Project Prevent Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the Project Prevent grant program, Catalog of Federal Domestic Assistance (CFDA) number 84.184M. This notice relates to the approved information collection under OMB control number 1894–0006.

**DATES:**

*Applications Available:* June 5, 2019.

*Deadline for Transmittal of Applications:* July 15, 2019.

*Deadline for Intergovernmental Review:* September 13, 2019.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Nicole A. White, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E326, Washington, DC 20202–6450. Telephone: (202) 453–6729. Email: *Project.Prevent@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The Project Prevent grant program provides grants to local educational agencies (LEAs) to increase their capacity to help schools in communities with pervasive violence to better address the needs of affected students and to break the cycle of violence in those communities.

*Background:* Children's exposure to violence, whether as victims or witnesses, is often associated with long-term physical, psychological, and emotional harms. These harms include, among others, depression, anxiety, and post-traumatic disorders; failing or having difficulty in school; and delinquency or criminal behavior, including violent acts.[1]

In December 2018, the Federal Commission on School Safety (FCSS) released its final report.[2] The report offers several recommendations for States, local communities, and the Federal government to improve school safety. The Project Prevent grant program supports activities directly linked with recommendations identified in the FCSS. Under this program, grantees may use funds to address some of those FCSS recommendations in their local districts as they develop approaches to improving school engagement, school safety, and the school environment for all students.

Project Prevent grants will enable LEAs to increase their capacity to identify, assess, and serve students exposed to pervasive violence, helping LEAS to offer affected students mental health services for trauma or anxiety; support conflict resolution programs; and implement other school–based violence prevention strategies in order to reduce the likelihood that these students will later commit violent acts.

*Priorities:* This competition includes one absolute priority and two competitive preference priorities. We are establishing the absolute priority and Competitive Preference Priority 1 for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded

[1] *https://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf.*

[2] *https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.*

applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priority 2 is from the Department's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096).

*Absolute Priority:* This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Expanding the Capacity of LEAs to Assist Schools in Communities With Pervasive Violence to Break the Cycle of Violence by Better Meeting the Needs of Affected Students.*

Under this priority, we provide funding for projects to expand the capacity of LEAs to more effectively assist impacted schools in communities with pervasive violence to better meet the needs of students directly or indirectly exposed to pervasive violence.

Applicants must address each of the following four subparts of this absolute priority. Projects must offer students: (1) Access to school-based counseling services, or referrals to community-based counseling services, for assistance in coping with trauma or anxiety; (2) school-based social emotional and behavioral supports for students to help address the effects of violence; (3) conflict resolution and other school-based strategies to prevent future violence; and (4) activities designed to promote a safer and improved school environment, which may include activities designed to decrease the incidence of harassment, bullying, fighting, gang participation, sexual assault, and substance abuse.

Projects funded under this priority may use up to 12 months during the first year of the project period for program planning. Applicants that propose to use this option must provide sufficient justification for why this program planning time is necessary, provide the intended outcomes of program planning in Year 1, and include a description of the proposed strategies and activities to be supported, such as developing baseline Government Performance and Results Act of 1993 data as described in the *Performance Measures* section of this notice.

*Competitive Preference Priorities:* These priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(1), we award an additional eight points to an application that meets Competitive Preference Priority 1, and we award up to an additional two points to an application, depending on how well the application meets Competitive Preference Priority 2, for a maximum of ten possible additional points under the competitive preference priorities. An applicant must clearly indicate in the abstract section of its application that it is addressing a competitive preference priority or priorities, including which of the priorities its application addresses.

These priorities are:

*Competitive Preference Priority 1—Collaboration With a Local Mental Health Agency (up to 8 points).*

An application that includes a memorandum of agreement (MOA) or memorandum of understanding (MOU) signed by the authorized representative of a local mental health agency that agrees to collaborate with the applicant on the proposed project and provide resources and/or administer services that are likely to substantially contribute to positive outcomes for the proposed project.

*Competitive Preference Priority 2—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens (up to 2 points).*

Supporting projects likely to improve student academic performance and better prepare students for employment, responsible citizenship, and fulfilling lives, including by preparing children or students to do one or more of the following:

(i) Develop positive personal relationships with others.

(ii) Develop determination, perseverance, and the ability to overcome obstacles.

(iii) Develop self-esteem through perseverance and earned success.

(iv) Develop problem-solving skills.

(v) Develop self-regulation in order to work toward long-term goals.

*Requirements:* We are establishing these application requirements for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

*Application Requirements:* Applicants must describe the following in their applications:

(a) *The severity and magnitude of the problem and identification of schools to be served by the proposed project.*

Applicants must identify the schools to be served by project activities and describe how pervasive violence in the community is specifically affecting students in those schools. Applicants must describe the nature of the problem for the LEA, based on information such as, but not limited to, incidents of community domestic violence or violent crime; rates of child abuse and neglect; school crime and safety data; student mental health screenings or assessments; surveys of school climate; surveys of student engagement; or other relevant data and information. The description may also include demographic data provided by U.S. Census surveys. In order to assess the magnitude of the problem and ensure the schools selected have the greatest need, school data cited must be compared to similar data at the State or local level, and on a per capita basis (such as homicides per 100,000 persons) when available.

(b) *Collaboration and coordination with related Federal, State, and local initiatives.*

Applicants must describe how they intend to work collaboratively with Federal, State, and local juvenile justice, mental health, public health, child welfare, or other community agencies to achieve project goals and objectives. Applicants must also describe proposed coordination with existing federally funded efforts related to youth violence prevention and mental health promotion (such as other violence prevention-related grants administered by the U.S. Department of Justice, the Substance Abuse and Mental Health Services Administration, and the Centers for Disease Control and Prevention [3]), if applicable. Evidence of collaboration and coordination must be provided through letters of support or MOAs/MOUs from local or State agencies and other federally funded projects, if applicable. Finally, applicants must describe how they will use Project Prevent grant program funds to supplement, rather than supplant, existing, ongoing, or new efforts to reduce youth violence and mitigate the effects of pervasive violence on students.

(c) *Building greater and more effective family engagement in the education of their children or students.*

Applicants must describe how the proposed project will encourage or improve family engagement.

(d) *Creating or expanding partnerships with community-based organizations to provide supports and services to students and families.*

Applicants must describe how they will partner with community-based

[3] See, for example, *https://www.justice.gov/ovw, https://www.justice.gov/ovw/domestic-violence, https://www.ovc.gov/, https://www.samhsa.gov/grants,* and *https://www.cdc.gov/grants/index.html.*

organizations (*e.g.,* local civic or community service organizations, local faith-based organizations, or local foundations or non-profit organizations) to provide support to students and families.

(e) *Activities that will expand and improve LEA capacity to serve students exposed to pervasive violence and ensure affected students receive mental health services.*

Applicants must describe the specific activities they will conduct to expand and improve LEA capacity to serve students exposed to pervasive violence and to ensure that affected students receive appropriate mental health services. To meet this requirement, the applicant must propose to conduct three or more of the following:

(1) Professional development opportunities for LEA and school mental health staff (*e.g.,* counselors, psychologists, and social workers) on how to screen for and respond to violence-related trauma and implement appropriate school-based mitigation strategies or trauma-informed care.

(2) Activities designed to improve the range, availability, and quality of school-based mental health services by hiring school and clinical psychologists, school counselors, or school social workers with expertise or training in violence prevention and trauma-informed care and qualified to respond to the mental health needs of students who have experienced trauma as a result of exposure to violence.

(3) Training for school staff (*e.g.,* teachers, administrators, and support staff), community partners, youth, and parents on the problem of student exposure to pervasive violence, as well as the importance of screening students and providing interventions to help students cope with traumatic events.

(4) Activities that address the needs of students in affected schools by developing or improving processes to better target services to these students and developing or improving processes to assess students who are exposed to pervasive violence and who may be experiencing resulting mental, emotional, or behavioral disorders.

(5) Activities designed to enhance linkages between LEA mental health services and community mental health systems to ensure affected students receive referrals to treatment as appropriate.

(f) *The delivery of a tiered continuum of evidence-based programs and practices in selected schools to promote conflict resolution, improve school climate and safety, and implement other school-based strategies to break the cycle of violence.*

Applicants must describe the continuum of evidence-based programs and practices that will be implemented at the school level and how these programs and practices will be organized to provide differentiated support based on student need and to break the cycle of violence. These programs and practices must include all of the following:

(1) Interventions and activities that are available to all students in a school, regardless of risk level, with the goal of preventing negative or violent behavior (such as harassment, bullying, fighting, gang participation, sexual assault, and substance abuse) and enhancing student knowledge and skills regarding positive behavior (such as expected school behavior and conflict resolution).

(2) Interventions and activities (such as those related to anger management, conflict resolution, promotion of positive behavior, and development of protective factors) that target individual students or a sub-group of students whose risk of developing mental or behavioral disorders is significantly higher than average.

(3) Interventions and services that target individual students who are at risk for, and have shown signs of, mental, emotional, or behavioral disorders; exhibit aggressive, violent, or disruptive behavior; or participate in gangs.

To meet this requirement, applicants must discuss the research and evidence supporting the proposed programs and practices and the expected effects on the target population. Applicants may use the Federal registries listed in the application package for identifying such programs and practices.

(g) *The framework for planning, implementation, and sustainability.*

Applicants must describe how the proposed project is integrated and aligned with the mission and vision of the LEA, including a description of the relationship of the project to the LEA's existing school safety or related plan. Applicants must include a description of anticipated challenges to success of the project and how they will be addressed, such as mitigating turnover at the LEA leadership, school leadership, and staff levels. Applicants must also include a timeline of activities for—

(1) Planning, which includes: Conducting a needs assessment that is comprehensive and examines areas for improvement related to learning conditions that create a safe and healthy environment for students, creating a logic model, completing resource mapping, selecting evidence-based programs, developing evaluation plans, and engaging partners and stakeholders;

(2) Implementation, which includes: Training on evidence-based programs, executing evidence-based programs, continuing engagement with stakeholders, communicating and collaborating strategically with community partners, and evaluating program implementation; and

(3) Sustainability, which includes: Further developing and expanding on the project's successes beyond the end of the grant, at the school and community levels, in alignment with other related efforts.

*Definitions:* We are establishing the definition of ''school engagement'' in this notice for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The definition of ''local educational agency'' is from 20 U.S.C. 7801(30). The definitions of ''ambitious,'' ''baseline,'' ''evidence-based,'' ''experimental study,'' ''logic model,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbook'' are from 34 CFR 77.1.

These definitions are:

*Ambitious* means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

*Baseline* means the starting point from which performance is measured and targets are set.

*Evidence-based* means the proposed project component is supported by promising evidence.

*Experimental study* means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works

Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(a) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(b) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(c) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

*Local educational agency (LEA)* means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Education.

(d) The term includes educational service agencies and consortia of those agencies.

(e) The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

*Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

*Project component* means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

*Promising evidence* means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(1) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(2) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

*Relevant outcome* means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

*School engagement* means participation in school-related activities, and the quality of school relationships, which may include relationships between and among administrators, teachers, parents, and students.

*What Works Clearinghouse Handbook (WWC Handbook)* means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, definitions, and requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

*Program Authority:* Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $10,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 and subsequent years from the list of unfunded applications from the competition announced in this notice.

*Estimated Range of Awards:* $250,000 to $1,000,000.

*Estimated Average Size of Awards:* $500,000.

*Estimated Number of Awards:* 20.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Limitation on Awards:* The Department will award only one grant per LEA.

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) *Need for project* (15 points).

(1) The Secretary considers the need for the project.

(2) In determining the need for the project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(b) *Significance* (15 points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(c) *Quality of the project design* (15 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(ii) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (5 points)

(iii) The extent to which the proposed project is supported by promising evidence (as defined in this notice). (5 points)

(d) *Quality of the project services* (25 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(e) *Quality of the management plan* (15 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of the project evaluation* (15 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200 subpart D; has not

fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 performance measures for the Project Prevent grant program:

(a) Annual decrease in violent, aggressive, and disruptive behavior in schools served by the grant.

(b) Annual increase in the number of students in schools served by the grant receiving school-based and community-based mental health services to address student needs resulting from exposure to violence.

(c) Annual increase in the school engagement (as defined in this notice) of students served by the grant.

(d) Quality of family engagement and grantee engagement with community-based organization(s), as defined and measured by the grantee.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. This data will be considered by the Department in making continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program must comply with the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

Baseline data: Applicants must provide baseline data (as defined in this notice) for each of the performance measures listed above and explain why each baseline is valid; or, if the applicant has determined that there are no established baseline data for a particular performance measure, explain why there is no established baseline and explain how and when, during the project period, the applicant will establish a valid baseline for the performance measure.

Performance measure targets: In addition, applicants must propose annual targets for the measures listed above in their application. Applicants must also provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Why each proposed performance target is ambitious (as defined in this notice) yet achievable compared to the baseline for the performance measure.

(2) (a) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (b) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

**Note:** If the applicant does not have experience with collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for its proposed project, which may include contracting with providers who have relevant expertise.

The reviewers of each application will score related selection criteria on the basis of how well an applicant has considered these measures in conceptualizing the approach and evaluation of the project.

All grantees must submit an annual performance report and final performance report with information

that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Frank T. Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2019–11677 Filed 6–4–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Stepping-up Technology Implementation

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation, Catalog of Federal Domestic Assistance (CFDA) number 84.327S. This notice relates to the approved information collection under OMB control number 1820–0028.

**DATES:** *Applications Available:* June 5, 2019.

*Deadline for Transmittal of Applications:* July 22, 2019.

*Pre-Application Webinar Information:* No later than June 10, 2019, OSERS will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

*Pre-Application Q & A Blog:* No later than June 10, 2019, OSERS will open a blog where interested applicants may post questions about the application requirements for this competition and where OSERS will post answers to the questions received. OSERS will not respond to questions unrelated to the application requirements for this competition. The blog may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html* and will remain open until June 24, 2019. After the blog closes, applicants should direct questions to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Deadline for Intergovernmental Review:* September 18, 2019.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5162, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6039. Email: *Terry.Jackson@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to (1) improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for children with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to children with disabilities in a timely manner.[1]

*Priorities:* This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority, and the competitive preference priority within that priority, are from allowable activities specified in sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(c)(1)(D) and 1481(d).

*Absolute Priority:* For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Stepping-up Technology Implementation.*

[1] Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.;* 28 CFR part 35) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies and local educational agencies provide captioning, video description, and other accessible educational materials to students with disabilities when such materials are necessary to provide students with disabilities with equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a ''free appropriate public education'' as defined in the Department's Section 504 regulation.

*Background:*

The purpose of this priority is to fund three cooperative agreements to identify strategies needed to effectively implement technology tools [2] based on promising evidence [3] that benefit children with disabilities [4] and their families, children with high needs [5] and their families, and educators; develop and disseminate products [6] that will help a broad range of sites to understand, use, and implement these technology tools; provide ongoing coaching and professional development supports to educators that will allow them to integrate the technology into curricula and programs to support high expectations for children with disabilities, service providers, and families; and scale-up and disseminate to additional sites.

Congress recognized in the 2004 reauthorization of IDEA that ''almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities'' (section 601(c)(5) of IDEA).

Innovative technology tools and programs, including assistive technology devices and services, are especially helpful as educators work to engage students who struggle with the general education curriculum. However, having access to tools alone does not ensure improved outcomes.

When educators receive the necessary supports to use technology effectively, technology integration in early childhood settings may increase social awareness and collaborative behaviors, improve abstract reasoning and problem-solving abilities, and enhance visual-motor coordination.

Technologies (*e.g.,* online career-readiness tools, computer-based writing tools to support literacy, web-based curriculum to support 21st-century learning) can support State educational agencies (SEAs) and local educational agencies (LEAs) to (a) improve student learning and engagement; (b) accommodate the special needs of students; (c) facilitate student, family, and teacher access to digital content and resources; and (d) improve the quality of instruction through personalized learning and data. Furthermore, while the implementation of technology for K–12 students typically occurs in public school settings, including public charter and magnet schools, there are over two million students attending parochial schools, another segment of the student population that could benefit from building 21st-century skills through innovative technology.

As stated in section 4109 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), technologies can be used to support LEAs and SEAs to increase student access to personalized, rigorous learning experiences. The Education Freedom Scholarships policy proposal would also allow States to design student scholarship programs that could be tailored to expand access to innovative technology tools and programs for students with disabilities.

Notwithstanding the potential benefits of using technology to improve learning outcomes, implementation can be a significant challenge. Even as access to coursework online expands, and the number of students involved in online learning has grown, many of these online learning technologies are not readily accessible to students with disabilities. Educators and families need products and resources that can assist them to readily implement technology tools for children with disabilities.

In response to this need and to address this issue for children with disabilities, Stepping-up Technology Implementation projects build on technology development efforts by identifying, developing, and disseminating products and resources that promote the effective implementation [7] of instructional and assistive technology tools in early childhood programs or K–12 settings.[8]

Projects must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

*Priority:*

The Department intends to fund three cooperative agreements to (a) identify strategies needed to readily implement existing technology tools based on promising evidence that benefit children with disabilities and children with high needs; and (b) develop and disseminate products (see footnote 5; *e.g.,* instruction manuals, lesson plans, demonstration videos, ancillary instructional materials) that will assist educators and families in early childhood programs or K–12 settings to readily use, understand, and implement these technology tools.

To be considered for funding under this priority, applicants must meet the application requirements. Any project funded under this absolute priority must also meet the programmatic and administrative requirements specified in the priority.

*Application Requirements*

An applicant must include in its application—

(a) A project design that is based on promising evidence;

(b) A logic model [9] or conceptual framework that depicts, at a minimum, the goals, activities, project evaluation, methods, performance measures, outputs, and outcomes of the proposed project.

[2] For the purposes of this priority, ''technology tools'' may include, but are not limited to, digital math text readers for students with visual impairments, reading software to improve literacy and communication development, and text-to-speech software to improve reading performance. These tools must assist or otherwise benefit students with disabilities.

[3] For the purposes of this priority, ''promising evidence'' has the meaning set forth in 34 CFR 77.1.

[4] In accordance with 34 CFR 300.8, ''Child with a disability'' means a child evaluated in accordance with the IDEA evaluation and eligibility procedures who is found to have a specific disability and, as a result of that disability, needs special education and related services. See also 20 U.S.C. 1401(3).

[5] For the purposes of this priority, ''children or students with high needs'' means children or students at risk of educational failure or otherwise in need of special assistance or support, such as children and students who are living in poverty, who are English Learners, who are academically far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, or are children or students with disabilities.

[6] For the purposes of this priority, ''products'' may include, but are not limited to, apps, instruction manuals, lesson plans, demonstration videos, ancillary instructional materials, and professional development modules such as collaborative groups, coaching, mentoring, or online supports.

[7] In this context, ''effective implementation'' means ''making better use of research findings in typical service settings through the use of processes and activities (such as accountable implementation teams) that are purposeful and described in sufficient detail such that independent observers can detect the presence and strength of these processes and activities.'' (Fixen, D.L., Naoom, S. F., Blasé, K.A., Friedman, R.M., & Wallace, F. (2005). Implementation Research: A synthesis of the literature. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute. The National Implementation Research Network (FMHI Publication #231)).

[8] For the purposes of this priority, ''settings'' include general education classrooms; special education classrooms; high-quality early childhood programs; private schools, including parochial schools; home education; after school programs; juvenile justice facilities; and settings other than those listed above in which students may receive services under IDEA.

[9] ''Logic model'' (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. See 34 CFR 77.1.

*Note:* The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel; www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework; www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf;* and *http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2015057.*

(c) A plan to implement the activities described in the *Project Activities* section of this priority;

(d) A plan, linked to the proposed project's logic model or conceptual framework, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(e) Documentation assuring that the final products disseminated to help sites effectively implement technology tools will be both open educational resources (OER) [10] and licensed through an open access licensing authority;

(f) Documentation that the technology tool used by the project is fully developed,[11] based on promising evidence, and addresses, at a minimum, the following principles of universal design for learning (UDL):

(1) Multiple means of presentation so that students can approach information in more than one way (*e.g.,* specialized software and websites, screen readers that include features such as text-to-speech, changeable color contrast, alterable text size, or selection of different reading levels);

(2) Multiple means of expression so that all students can demonstrate knowledge through options such as writing, online concept mapping, or speech-to-text programs, where appropriate; and

(3) Multiple means of engagement to stimulate interest in and motivation for learning (*e.g.,* options among several different learning activities or content for a particular competency or skill and providing opportunities for increased collaboration consistent with UDL principles); [12]

(g) A plan for how the project will sustain project activities after funding ends;

(h) A plan, for recruiting and selecting sites,[13] which includes appropriate consideration of a wide range of settings where children with disabilities are served, including the following sites:

(1) Three development sites. Development sites are the sites in which iterative development [14] of the products and resources intended to support the implementation of technology tools will occur. The project must start implementing the technology tool with one development site in year one of the project period and two additional development sites in year two;

(2) Four pilot sites. Pilot sites are the sites in which try-out, formative evaluation, and refinement of the products and resources will occur. The project must work with the four pilot sites during years three and four of the project period; and

(3) Ten dissemination sites. Dissemination sites will be selected if the project is extended for a fifth year. Dissemination sites will be used to (a) refine the products for use by educators, and (b) evaluate the performance of the tool. Dissemination sites will receive less TA from the project than development or pilot sites. Also, at this stage (*i.e.,* the fifth year), dissemination sites will extend the benefits of the technology tool to additional students. To be selected as a dissemination site, eligible sites must commit to working with the project to implement the technology tool.

*Note:* A site may not serve in more than one category (*i.e.,* development, pilot, dissemination).

*Note:* A minimum of three of the seven development and pilot sites must be in settings other than traditional public elementary and secondary schools. A minimum of four of the 10 dissemination sites must be in settings other than traditional public elementary and secondary schools. These non-traditional sites must otherwise meet the requirements of each category listed above.

(i) Information on the development and pilot settings, including student demographics and other pertinent data (*e.g.,* whether the settings are schools identified for comprehensive or targeted support and improvement in accordance with section 1111(c)(4)(C)(iii), (c)(4)(D), or (d)(2)(C)–(D) of the ESEA); and

(j) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

*Note:* Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(2) A three-day project directors' conference in Washington, DC, during each year of the project period.

(3) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

*Project Activities*

To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Recruit a minimum of three development sites and four pilot sites in accordance with the plan proposed under paragraphs (h) and (i) of the *Application Requirements* section of this notice.

*Note:* Final dissemination site selection will be determined in consultation with the OSEP project officer following the kick-off meeting.

(b) Identify and develop resources and products that, when used to support the implementation of the technology tool, create accessible learning opportunities for all children, including children with disabilities and children with high needs, and support the sustained implementation of the selected technology tool. Development of the products must be an iterative process beginning in a single development school and continuing through repeated cycles of development and refinement in the other development sites, followed by a formative evaluation and refinement in the pilot sites. To support implementation of the technology tool the products and resources must, at a minimum, include—

(1) An instrument or method for assessing—

[10] OERs are teaching and learning materials that the public may freely use and reuse at no cost. Unlike fixed, copyrighted resources, OER have been authored or created by an individual or organization that chooses to retain few, if any, ownership rights. Retrieved from *www.oercommons.org/about.*

[11] A technology that is ''fully developed'' is a completed, existing technology that is ready to be implemented. Any enhancements or additions to the existing technology should be minor and time-limited and *must* be completed before the end of year one.

[12] For more information on UDL principles, see *www.udlcenter.org/aboutudl/whatisudl/3principles.*

[13] For more information on recruiting and selecting sites, refer to Assessing Sites for Model Demonstration: Lessons Learned from OSEP Grantees at *http://mdcc.sri.com/documents/MDCC_Site_Assessment_Brief_09-30-11.pdf.*

[14] For the purposes of this priority, ''iterative development'' refers to a process of testing, systematically securing feedback, and then revising the educational intervention to increase the likelihood that it will be implemented with fidelity. (Diamond, K.E., & Powell, D.R. (2011). An iterative approach to the development of a professional development intervention for Head Start teachers. *Journal of Early Intervention, 33*(1), 75–93).

(i) The site staff's current technology uses and needs, current technology investments, firewall issues, and the knowledge and availability of dedicated on-site technology personnel;

(ii) The readiness of development and pilot sites to implement the technology tool. Any instruments and methods for assessing readiness may include resource inventory checklists, school self-study guides, and surveys of educators' and families' interests; and

(iii) Whether the technology tool has achieved its intended outcomes.

(c) Provide ongoing training to educators and families so that they might implement the technology tool with fidelity and to integrate it into the curriculum.

(d) Collect and analyze data on whether the technology tool has achieved its intended outcomes for early childhood development, K–12, or college- and career-readiness.

(e) Collect formative and summative data from the development and pilot sites to refine and evaluate the products.

(f) If the project is extended to a fifth year—

(1) Provide the products and the technology tool to no fewer than 10 dissemination sites; and

(2) Collect summative data about the success of the project's products and services in supporting implementation of the technology tool in the dissemination sites.

(g) By the end of the project period, provide—

(1) Information on the products and resources, as supported by the project evaluation, including any accessibility features, that will enable other sites to implement and sustain implementation of the technology tool;

(2) Information on the technology implementation report, including data on how educators and families used the technology, data on how technology impacted child outcomes, how technology was implemented with fidelity, and features of universal design for learning;

(3) Information on how the technology tool contributed to changed practices and improved early childhood outcomes, academic achievement, or college- and career-readiness for children with disabilities, as well as children with high needs (*i.e.,* data to assess how well the project addressed the goals of the project as described in the logic model); and

(4) A plan for disseminating the technology tool and accompanying products beyond the sites directly involved in the project and how dissemination will be sustained after the project ends.

*Cohort Collaboration and Support*

OSEP project officer(s) will provide coordination support among the projects. Each project funded under this priority must—

(a) Participate in monthly conference-call discussions to share and collaborate on implementation and specific project issues; and

(b) Provide information annually using a template that captures descriptive data on project site selection, processes for installation of technology, and the use of technology and sustainability (*i.e.,* the process of technology implementation).

*Note:* The following website provides more information about implementation research: *http://nirn.fpg.unc.edu/learn-implementation.*

*Fifth Year of Project*

The Secretary may extend a project one year beyond the initial 48 months to work with dissemination sites if the grantee is achieving the intended outcomes of the project (as demonstrated by data gathered as part of the project evaluation) and making a positive contribution to the implementation of a technology tool based on promising evidence with fidelity in the development and pilot sites. Each applicant must include in its application a plan for the full 60-month period. In deciding whether to continue funding the project for the fifth year, the Secretary will consider the requirements of 34 CFR 75.253(a), and will consider—

(a) The recommendation of a review team consisting of the OSEP project officer and other experts selected by the Secretary. This review will be held during the last half of the third year of the project period;

(b) The success and timeliness with which the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's activities have contributed to changed practices and improved early childhood outcomes, academic achievement, or college- and career-readiness for students with disabilities.

*Competitive Preference Priority:* Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

*Improving Academic Outcomes for Children with Disabilities (0 or 5 points).*

Projects that are designed to improve outcomes for children with disabilities in one of the following areas:

(a) Literacy for children with disabilities in grades 3 through 5; or

(b) Science, technology, engineering, or mathematics (STEM) for children with disabilities enrolled in middle school (grades 6 through 8).

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

*Program Authority:* 20 U.S.C. 1474 and 1481.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

*Note:* The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

*Note:* The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Cooperative agreements.

*Estimated Available Funds:* $1,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $450,000 to $500,000 per year.

*Estimated Average Size of Awards:* $475,000 per year.

*Maximum Award:* We will not make an award exceeding $500,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 3.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

*1. Eligible Applicants:* SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or

Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project;

(ii) The magnitude or severity of the problem to be addressed by the proposed project;

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iv) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies; and

(v) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (25 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(c) *Quality of the project design (20 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project; and

(v) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(d) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(v) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(e) *Adequacy of resources (10 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(iii) The extent to which the budget is adequate to support the proposed project;

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project; and

(v) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant

plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities Program. These measures are:

- Program Performance Measure #1: The percentage of Educational Technology, Media, and Materials Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- Program Performance Measure #2: The percentage of Educational Technology, Media, and Materials Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure #3: The percentage of Educational Technology, Media, and Materials Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure #4.1: The Federal cost per unit of accessible educational materials funded by the Educational Technology, Media, and Materials Program.
- Program Performance Measure #4.2: The Federal cost per unit of accessible educational materials from the National Instructional Materials Accessibility Center funded by the Educational Technology, Media, and Materials Program.
- Program Performance Measure #4.3: The Federal cost per unit of video description funded by the Educational Technology, Media, and Materials Program.

These measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5074A, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

**Johnny W. Collett,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2019–11641 Filed 6–4–19; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants for Credit Enhancement for Charter School Facilities

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for CSP—Grants for Credit Enhancement for Charter School Facilities (Credit Enhancement), Catalog of Federal Domestic Assistance (CFDA) number 84.354A. This notice relates to the approved information collection under OMB control number 1855–0007.

**DATES:**

*Applications Available:* June 5, 2019.

*Deadline for Transmittal of Applications:* July 19, 2019.

*Deadline for Intergovernmental Review:* September 18, 2019.

*Pre-Application Webinar Information:* The Credit Enhancement program intends to hold a webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided on the Credit Enhancement web page at *https://innovation.ed.gov/what-we-do/charter-schools/credit-enhancement-for-charter-school-facilities-program/applicant-info-and-eligibility/*.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E211, Washington, DC 20202–5970. Telephone: (202) 205–2204. Email: *Clifton.Jones@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The Credit Enhancement program provides grants to eligible entities to demonstrate innovative methods of helping *charter schools* to address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans and bond financing.

*Priorities:* This competition includes one competitive preference priority and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from 34 CFR 225.12.

*Competitive Preference Priority:* For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application, depending on how well the application addresses the priority.

This priority is:

The capacity of *charter schools* to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA, as amended by the Every Student Succeeds Act (up to 5 points);

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments (up to 5 points); and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families (up to 5 points).

*Invitational Priorities:* For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

*Invitational Priority 1.*

Applicants proposing to—

(1) Target services in one or more qualified opportunity zones as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97); or

(2) Partner with one or more qualified opportunity funds under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, in financing charter school facilities.

In addressing this priority, an applicant is encouraged to provide the census tract number(s) of the qualified opportunity zone(s) in which it proposes to target services and identify the qualified opportunity fund(s) with which it proposes to partner, as applicable. A list of qualified opportunity zones, with census tract numbers, is available at *www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

*Note:* The Department is also interested in applications that leverage newly created or previously untapped sources of capital or other assistance, which may include non-Federal programs, in financing *charter school* facilities.

*Invitational Priority 2.*

Projects proposing to target services in geographic areas and communities for which limited or no services have been provided under this program. Detailed information regarding the geographic areas and communities for which services have been provided under this program is available on the National Charter School Resource Center web page at *https://charterschoolcenter.ed.gov/facilities/facilities-transactions-data.*

*Definitions:*

The following definition is from section 4310 of the ESEA (20 U.S.C. 7221i(2)).

*Charter school* means a public school that—

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements in section 4310 of the ESEA;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA (20 U.S.C. 7221b(c)(3)(A)), if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated *charter school* (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated *charter school* and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated *charter school* and the enrolling school, admits students on the basis of a lottery as described in paragraph (h)(i);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in *charter schools* pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the *charter school;* and

(m) May serve students in early childhood education programs or postsecondary students.

Program Authority: 20 U.S.C. 7221c.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 225. (e) The notice of final regulations published elsewhere in this issue of the **Federal Register**.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $45,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $4,000,000 to $20,000,000.

*Estimated Average Size of Awards:* $12,000,000.

*Estimated Number of Awards:* 4.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

## III. Eligibility Information

1. *Eligible Applicants:*

(a) A public entity, such as a State or local governmental entity;

(b) A private, nonprofit entity; or

(c) A consortium of entities described in (a) and (b).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* The *charter schools* that a grantee selects to benefit from this program must meet the definition of *charter school* in section 4310 of the ESEA (20 U.S.C. 7221i)).

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Content and Form of Application Submission:* Program statue, and applicable regulations require that eligible Credit Enhancement program applications must include the following specific elements:

(a) A statement identifying the activities that the eligible entity proposes to carry out with funds received under the program, including how the eligible entity will determine which *charter schools* will receive assistance, and how much and what types of assistance *charter schools* will receive. (ESEA section 4304(d)(2)(A)).

(b) A description of the involvement of *charter schools* in the application's development and the design of the proposed activities. (ESEA section 4304(d)(2)(B)).

(c) A description of the eligible entity's expertise in capital market financing. (ESEA section 4304(d)(2)(C)). (Consortium applicants must provide this information for each of the participating organizations.)

(d) A description of how the proposed activities will leverage the maximum amount of private-sector financing capital relative to the amount of government funding used and otherwise enhance credit available to *charter schools,* including how the eligible entity will offer a combination of rates and terms more favorable than the rates and terms that a *charter school* could receive without assistance from the eligible entity under this section. (ESEA section 4304(d)(2)(D)).

(e) A description of how the eligible entity possesses sufficient expertise in education to evaluate the likelihood of success of a *charter school* program for which facilities financing is sought. (ESEA section 4304(d)(2)(E)).

(f) In the case of an application submitted by a State governmental entity, a description of the actions that the eligible entity has taken, or will take, to ensure that *charter schools* within the State receive the funding that *charter schools* need to have adequate facilities. (ESEA section 4304(d)(2)(F)).

(g) In the case of applicants applying as a consortium, applicants must also

submit consortium agreements as part of their application package. These applicants must either designate one member of the group to apply for the grant or establish a separate legal entity to apply for the grant. All members of the consortium must then enter into an agreement that details the activities that each member of the group plans to perform and that binds each member to the application statements and assurances. This consortium agreement must be submitted as part of the consortium's application. The Department's administrative regulations at 34 CFR 75.127–129 provide more details about the requirements that govern group/consortium applications.

3. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Credit Enhancement program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:*

(a) *Reserve accounts.* An eligible entity receiving a grant must, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the funds received, other than funds used for administrative costs, in a reserve account established and maintained by the eligible entity. Amounts deposited in such account must be used by the eligible entity for one or more of the following purposes:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, *charter schools.*

(4) Facilitating the issuance of bonds by *charter schools,* or by other public entities for the benefit of *charter schools,* by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple *charter school* projects within a single bond issue).

Funds received and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds received must be deposited in the reserve account and used in accordance with this program. ESEA Section 4304(f)

(b) *Charter school objectives.* An eligible entity receiving a grant must use the funds deposited in the reserve account to assist one or more *charter schools* to access private-sector capital to accomplish one or more of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a *charter school*) in improved or unimproved real property that is necessary to commence or continue the operation of a *charter school.*

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a *charter school.*

(3) The predevelopment costs required to assess sites for purposes of paragraph (1) or (2) and that are necessary to commence or continue the operation of a *charter school.* ESEA Section 4304(e)

(c) *Other.* Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. Under 20 U.S.C. 7221c(g), an eligible entity may use not more than 2.5 percent of the funds received under this grant for the administrative costs of carrying out its project responsibilities.

We specify unallowable costs in 34 CFR 225.21.

The full faith and credit of the United States are not pledged to the payment of funds under such obligation. In the event of a default on any debt or other obligation, the United States has no liability to cover the cost of the default.

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds. Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must mandate disinterested decision-making. The Secretary, in accordance with chapter 37 of title 31 of the United States Code, will collect all or a portion of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that: (1) The grantee has permanently ceased to use such funds to accomplish the purposes described in the authorizing statute and the Performance Agreement; or (2) not earlier than two years after the date on which it first receives these funds, the grantee has failed to make substantial progress in undertaking the grant project.

6. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 225.11. The Secretary awards up to

100 points for addressing these criteria. The maximum possible score for addressing each criterion is indicated in parentheses. We encourage applicants to make explicit connections to the selection criteria and factors in their applications.

The Secretary uses the following criteria to evaluate an application for a Credit Enhancement grant:

(a) *Quality of project design and significance (35 points):*

In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to *charter schools* at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting *charter schools* for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public-sector funding and increase the number and variety of *charter schools* assisted in meeting their facilities needs more than would be accomplished absent the program;

(7) The extent to which the project will serve *charter schools* in States with strong charter laws, consistent with the criteria for such laws in section 4303(g)(2) of the ESEA; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services (15 points):*

In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the *charter schools* to be served;

(2) The extent to which *charter schools* and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing *charter schools'* access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting *charter schools* with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity (35 points):*

In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a *charter school;*

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that *charter schools* within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the *charter school* facilities programs, their performance in implementing these grants.

(d) *Quality of project personnel (15 points):*

In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII,

require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) If you receive a grant under this competition, you must submit an annual report that complies with the reporting requirements for Credit Enhancement grantees in section 4304(h)(2) of the ESEA and the performance and financial expenditure reporting requirements in 34 CFR 75.720. At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:*

(a) *Program Performance Measures.* The performance measures for this program are: (1) The amount of funding grantees leverage for *charter schools* to acquire, construct, and renovate school facilities; and (2) the number of *charter schools* served. Grantees must provide information that is responsive to these measures as part of their annual performance reports.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the project and program. Applicants must provide the following information as directed under 34 CFR 75.110(b):

(1) *Project Performance Measures.* How each proposed project-specific performance measure would accurately measure the performance of the project and how the proposed project-specific performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Project Performance Targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

*Note:* The Secretary encourages applicants to consider measures and targets tied to their grant activities during the grant period. For instance, if an applicant is using eligibility for free and reduced-price lunch to measure the number of low-income families served by the project, the applicant could provide a percentage for students qualifying for free and reduced-price lunch. If an applicant is targeting services to a Qualified Opportunity Zone, the applicant could provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services. The measures should be sufficient to gauge the progress throughout the grant period, and show results by the end of the grant period.

(3) *Data Collection and Reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

*Note:* If applicants do not have experience with collection and reporting of performance data through other projects or research, they should provide other evidence of their capacity to successfully carry out data collection and reporting for their proposed project.

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 30, 2019.

**Frank T. Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2019–11725 Filed 6–4–19; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

**[FE Docket No. 16–144–LNG]**

### Driftwood LNG LLC; Opinion and Order Granting Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of a Record of Decision (ROD) published under the National Environmental Policy Act of 1969 (NEPA) and implementing regulations. As discussed, this ROD supports DOE/FE's decision in DOE/FE Order No. 4373, an opinion and order authorizing Driftwood LNG LLC to export domestically produced liquefied natural gas (LNG) to non-free trade agreement countries under section 3(a) of the Natural Gas Act (NGA).

**FOR FURTHER INFORMATION CONTACT:**

Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627, *Amy.Sweeney@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *Cassandra.Bernstein@hq.doe.gov*

**SUPPLEMENTARY INFORMATION:** On May 2, 2019, DOE/FE issued Order No. 4373 to Driftwood LNG LLC (Driftwood LNG) under NGA section 3(a), 15 U.S.C. 717b(a). This Order authorizes Driftwood LNG to export domestically produced LNG to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Driftwood LNG is authorized to export LNG in a volume equivalent to 1,415.3 billion cubic feet (Bcf) per year of natural gas (3.88 Bcf/day) from the proposed Driftwood LNG Facility (Facility), to be located in Calcasieu Parish, Louisiana.

DOE/FE participated as a cooperating agency with the Federal Energy Regulatory Commission in preparing an environmental impact statement (EIS) analyzing the potential environmental impacts of the proposed Facility that would be used to support the export authorization sought from DOE/FE. DOE adopted the EIS and prepared the ROD, which is attached as an appendix to the Order. The ROD can be found here: *https://www.energy.gov/fe/downloads/driftwood-lng-llc-fe-dkt-no-16-144-lng.*

Signed in Washington, DC, on May 30, 2019.

**Amy Sweeney,**

*Director, Division of Natural Gas Regulation, Office of Fossil Energy.*

[FR Doc. 2019–11717 Filed 6–4–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 15–96–LNG]**

### Port Arthur LNG, LLC; Opinion and Order Granting Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of a Record of Decision (ROD) published under the National Environmental Policy Act of 1969 (NEPA) and implementing regulations. As discussed, this ROD supports DOE/FE's decision in DOE/FE Order No. 4372, an opinion and order authorizing Port Arthur LNG, LLC to export domestically produced liquefied natural gas (LNG) to non-free trade agreement countries under section 3(a) of the Natural Gas Act (NGA).

**FOR FURTHER INFORMATION CONTACT:**

Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627, *Amy.Sweeney@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *Cassandra.Bernstein@hq.doe.gov*

**SUPPLEMENTARY INFORMATION:** On May 2, 2019, DOE/FE issued Order No. 4372 to Port Arthur LNG, LLC (Port Arthur LNG) under NGA section 3(a), 15 U.S.C. 717b(a). This Order authorizes Port Arthur LNG to export domestically produced LNG to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Port Arthur LNG is authorized to export LNG in a volume equivalent to 698 billion cubic feet (Bcf) per year of natural gas (1.91 Bcf/day) from the proposed Port Arthur LNG Project (Project), to be located in Port Arthur, Texas.

DOE/FE participated as a cooperating agency with the Federal Energy Regulatory Commission in preparing an environmental impact statement (EIS) analyzing the potential environmental impacts of the proposed Project that would be used to support the export authorization sought from DOE/FE. DOE adopted the EIS and prepared the ROD, which is attached as an appendix to the Order. The ROD can be found here: *https://www.energy.gov/fe/downloads/port-arthur-lng-llc-fe-dkt-no-15-96-lng.*

Signed in Washington, DC, on May 30, 2019.

**Amy Sweeney,**

*Director, Division of Natural Gas Regulation, Office of Fossil Energy.*

[FR Doc. 2019–11718 Filed 6–4–19; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AC19–122–000]**

### Pacific Gas and Electric Company; Notice of Filing

Take notice that on May 9, 2019, Pacific Gas and Electric Company filed a request for approval to determine its allowance for funds used during construction rate in a manner that excludes certain liability provisions required by Generally Accepted Accounting Principles that do not have an impact on cash available to fund construction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comments:* 5:00 p.m. Eastern Time on June 19, 2019.

Dated: May 30, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–11697 Filed 6–4–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Public Notice: Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | File date | Presenter or requestor |
|---|---|---|
| **Prohibited** | | |
| P–199–205 .... | 5–7–2019 | FERC Staff.[1] |
| **Exempt** | | |
| NONE. | | |

[1] Correspondence dated May 7, 2019 from David Bernhart, of the National Oceanic Atmospheric Administration.

Dated: May 30, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–11698 Filed 6–4–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG19–117–000.
*Applicants:* Turquoise Nevada LLC.
*Description:* Self-Certification of EG or FC of Turquoise Nevada LLC.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5296.
*Comments Due:* 5 p.m. ET 6/20/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2434–009; ER10–2436–009; ER10–2467–009; ER17–1666–006; ER18–1709–002.
*Applicants:* Fenton Power Partners I, LLC, Wapsipinicon Wind Project, LLC, Hoosier Wind Project, LLC, Red Pine Wind Project, LLC, Stoneray Power Partners, LLC.
*Description:* Notice of Change in Status of Fenton Power Partners I, LLC, et al.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5207.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER10–2437–013.
*Applicants:* Arizona Public Service Company.
*Description:* Notice of Change in Status of Arizona Public Service Company.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5130.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER17–2341–001.
*Applicants:* CA Flats Solar 130, LLC.
*Description:* Supplement to February 1, 2019 CA Flats Solar 130, LLC tariff filing (Notice of Change in Category Status).
*Filed Date:* 5/23/19.
*Accession Number:* 20190523–5216.
*Comments Due:* 5 p.m. ET 6/13/19.

*Docket Numbers:* ER18–1918–003.
*Applicants:* Kestrel Acquisition, LLC.
*Description:* Compliance filing: compliance 2019 to be effective 6/1/2018.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5236.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER18–2399–001; ER18–1990–001.
*Applicants:* Canal Generating LLC, Stonepeak Kestrel Energy Marketing LLC.
*Description:* Notice of Change in Status of Canal Generating LLC, et al.
*Filed Date:* 5/30/19.

*Accession Number:* 20190530–5324.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–1155–001.
*Applicants:* Black Hills Electric Generation, LLC.
*Description:* Compliance filing: Compliance Filing to be effective 4/29/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5045.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–1530–001.
*Applicants:* Horizon West Transmission, LLC.
*Description:* Tariff Amendment: Horizon West Transmission, LLC Amendment to Notice of Succession to be effective 3/13/2019.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5117.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER19–1179–000.
*Applicants:* AES ES Gilbert, LLC.
*Description:* Report Filing: AES ES Gilbert, LLC Refund Report to be effective N/A.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5190.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–1990–000.
*Applicants:* Grand River Dam Authority.
*Description:* Request for Limited Waiver, et al. of Grand River Dam Authority.
*Filed Date:* 5/24/19.
*Accession Number:* 20190524–5268.
*Comments Due:* 5 p.m. ET 6/7/19.

*Docket Numbers:* ER19–1996–000.
*Applicants:* Oklahoma Gas and Electric Company.
*Description:* § 205(d) Rate Filing: Revisions to Power Sales Tariff to be effective 5/29/2019.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5114.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER19–1997–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: First Amended LGIA sPower, Antelope Expansion, San Pablo Raceway, Big Sky North to be effective 5/30/2019.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5118.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER19–1998–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA & 4 WMPAs #3175, 3203, 3257, 3276, 3503 RE: Marina to GSRP to be effective 8/25/2014.
*Filed Date:* 5/28/19.
*Accession Number:* 20190528–5119.
*Comments Due:* 5 p.m. ET 6/18/19.

*Docket Numbers:* ER19–1999–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: PSCo-TSGT-Non-Conf BASA–409–0.2.0–NOC to be effective 5/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5000.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2000–000.
*Applicants:* Citizens Sunrise Transmission LLC.
*Description:* § 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational Filing to be effective 6/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5028.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2001–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–05–30_SA 3046 IPL–MEC 1st Rev GIA (J455) to be effective 5/13/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5049.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2002–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–05–30_SA 3181 Glaciers Edge-MidAmerican 1st Rev GIA (J506) to be effective 5/15/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5056.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2003–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2019–05–30_SA 3305 NSPM–GRE T–T (Medina) to be effective 6/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5124.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2004–000.
*Applicants:* Alabama Power Company.
*Description:* § 205(d) Rate Filing: Mitchell County Solar LGIA Filing to be effective 5/14/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5175.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2005–000.
*Applicants:* Wildhorse Wind Energy, LLC.
*Description:* Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing to be effective 8/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5186.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2005–001.
*Applicants:* Wildhorse Wind Energy, LLC.
*Description:* Tariff Amendment: Amendment to MBR Authority Application and Initial Baseline Tariff Filing to be effective 8/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5322.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2006–000.
*Applicants:* Appalachian Power Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: APCo submits Interconnection Agreement SA No. 5363 (IA) to be effective 6/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5213.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2007–000.
*Applicants:* Alabama Power Company.
*Description:* § 205(d) Rate Filing: Amendment of Southern's Tariff Vol. No. 4 to Revise Seller Category for APCo to be effective 8/1/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5216.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2008–000.
*Applicants:* Louisiana Generating LLC.
*Description:* Request of Louisiana Generating LLC to recover costs associated with acting as a Local Balancing Authority under MISO Tariff.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5220.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2009–000.
*Applicants:* PacifiCorp.
*Description:* Tariff Cancellation: Termination of ESM Construction Agreement—Sigurd to be effective 7/30/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5299.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2010–000.
*Applicants:* Dominion Energy South Carolina, Inc.
*Description:* § 205(d) Rate Filing: DESC–DOE Tritium Relocation Agr As Amended to be effective 5/31/2019.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5301.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2012–000.
*Applicants:* Illinois Power Marketing Company.
*Description:* Tariff Cancellation: 2013 SSR Notice of Cancellation to be effective 1/1/2014.
*Filed Date:* 5/30/19.
*Accession Number:* 20190530–5376.
*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2013–000.

*Applicants:* Illinois Power Marketing Company.

*Description:* Tariff Cancellation: 2014 SSR Notice of Cancellation to be effective 1/1/2015.

*Filed Date:* 5/30/19.

*Accession Number:* 20190530–5377.

*Comments Due:* 5 p.m. ET 6/20/19.

*Docket Numbers:* ER19–2014–000.

*Applicants:* Illinois Power Marketing Company.

*Description:* Tariff Cancellation: 2015 SSR Notice of Cancellation to be effective 1/1/2016.

*Filed Date:* 5/30/19.

*Accession Number:* 20190530–5379.

*Comments Due:* 5 p.m. ET 6/20/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 30, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–11696 Filed 6–4–19; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R08–OAR–2012–0479; FRL–9994–22–Region 8]**

## Proposed Information Collection Request; Comment Request; Federal Implementation Plan for Oil and Natural Gas Well Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (Renewal).'' (EPA ICR No. 2478.03, OMB Control No. 2008–0001) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2020. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Written comments must be received on or before August 5, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0479 at *http://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 and Radiation Division, U.S. 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:** Gail Fallon, U.S. Environmental Protection Agency, Region 8, Air and Radiation Division, (Mail Code 8P–ARD), 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6281, *fallon.gail@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. Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

### Abstract

This ICR covers information collection requirements in the final Federal Implementation Plan (FIP) for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota (40 CFR part 49, subpart K, §§ 49.4161 through 49.4168), herein referred to as the FBIR FIP. In general, owners or operators are required to: (1) Conduct certain monitoring; (2) keep specific records to be made available at the EPA's request; and (3) to prepare and submit an annual report (40 CFR part 49, subpart K,

§§ 49.4166 through 49.4168). These records and reports are necessary for the EPA Administrator (or the tribal agency if delegated), for example, to: (1) Confirm compliance status of stationary sources; (2) identify any stationary sources not subject to the requirements and identify stationary sources subject to the regulations; and (3) ensure that the stationary source control requirements are being achieved. All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the agency policies set forth in 40 CFR part 2, subpart B.

*Form Numbers:* None.

*Respondents/affected entities:* Owners or operators of oil and natural gas facilities.

*Respondent's obligation to respond:* Mandatory (42 U.S.C. 7414).

*Estimated number of respondents:* 7,326 (total).

*Frequency of response:* On occasion, annually.

*Total estimated burden:* 112,000 hours (per year). Burden is defined at 5 CFR 1320.3(b)

*Total estimated cost:* $24,900,000 (per year), includes $8,470,000 annualized capital or operation and maintenance costs.

*Changes in Estimates:* There is likely an increase of 67,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. A burden, as defined by 5 CFR 1320.3(b), is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for the EPA. The increase in total estimated respondent burden hours is due to the anticipated industry growth projected to occur over the next three-year period of this ICR. The increase in labor costs from the most-recently approved ICR is due to adjustments in increased labor rates. Also, the number of respondents has been updated to reflect the new estimated increased number of respondents since the approval of the prior ICR. Lastly, as a result of these increases and adjusting to 2018 dollars, the Average Annual Capital/Startup Costs and Total Operations & Maintenance Costs have both increased from the most-recently approved ICR.

Dated: May 30, 2019.

**Debra Thomas,**

*Acting Regional Administrator, EPA Region 8.*

[FR Doc. 2019–11699 Filed 6–4–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2018–0014; FRL–9994–17]**

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before December 2, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, by one of the following methods:

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

Submit written withdrawal request by mail to: Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

**FOR FURTHER INFORMATION CONTACT:** Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

### II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain pesticide products and amend product registrations to terminate certain uses registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Company No. | Product name | Active ingredients |
|---|---|---|---|
| 5481–79 | 5481 | Alco Sta-Gon Insecticidal Dust | Boric acid. |
| 5481–132 | 5481 | Cryolite 93 | Cryolite. |
| 39967–82 | 39967 | Preventol PTAP | 4-tert-Amylphenol. |
| 73049–9 | 73049 | DeVine Mycoherbicide | Live Chlamydospores of Phytophthora palmivora MWV. |
| CA–070018 | 60256 | Lorsban 30 Flowable | Chlorpyrifos. |
| WY–070004 | 400 | Acramite-4SC | Bifenazate. |

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Company No. | Product name | Active ingredient | Uses to be terminated |
|---|---|---|---|---|
| 81964–4 | 81964 | Tide Triadimefon Technical | Triadimefon | Pineapple use. |

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

| EPA company No. | Company name and address |
|---|---|
| 400 | Macdermid Agricultural Solutions, Inc., C/O Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. |
| 5481 | Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706. |
| 39967 | Lanxess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112. |
| 60256 | California Seed Association, 1521 "I" Street, Sacramento, CA 95814. |
| 73049 | Valent U.S.A., LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025. |
| 81964 | Chemstarr, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136TH Street Ct., NW, Gig Harbor, WA 98332. |

## III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

## IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

## V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2, of Unit II.

For voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses,

identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: May 23, 2019.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2019–11675 Filed 6–4–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[MB Docket No. 18–23; DA 19–438]**

### Elimination of Obligation To File Broadcast Mid-Term Report (Form 397)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) announces that the Office of Management and Budget (OMB) has approved the non-substantive modifications stemming from the Commission's Elimination of Obligation to File Broadcast Mid-Term Report Order (*Order).* This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those changes and the elimination of FCC Form 397.

**DATES:** The changes take effect June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Jonathan Mark, *Jonathan.Mark@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–3634. Direct press inquiries to Janice Wise at (202) 418–8165.

**SUPPLEMENTARY INFORMATION:**

#### Synopsis

On February 14, 2019, the Federal Communications Commission adopted in the above referenced proceeding a Report and Order (*Order*) to eliminate the Broadcast Mid-Term Report (Form 397).[1] Because the information collected in the Form 397 is or will be otherwise available via broadcasters' online public inspection files, the Commission has found that the requirement to file Form 397 is outdated and unnecessary. EEO staff will instead rely on publicly available information in its statutorily-required mid-term reviews of broadcasters' equal employment opportunity practices. On May 15, 2019, a copy of the *Order* was published in the **Federal Register** [2] and the Commission received OMB approval to eliminate Form 397. Pursuant to the *Order,* the elimination of Form 397 will become effective upon publication of this notice in the **Federal Register**.

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

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff Media Bureau.*

[FR Doc. 2019–11732 Filed 6–4–19; 8:45 am]

**BILLING CODE 6712–01–P**

[1] *Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2),* MB Docket No. 18–23, Report and Order, FCC 19–10 (rel. February 15, 2019).

[2] *See* 84 FR 21718.

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act; Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Friday, June 21st, 2019 in the Commission Meeting Room, from 10:00 a.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

**DATES:** Friday June 21, 2019.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Ha, Deputy Chief, Policy and Rules Division 202–418–2099; *michael.ha@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** At the June 21st meeting, the FCC Technological Advisory Council will introduce the 2019 TAC members and discuss status of the 2019 TAC work program. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Michael Ha, the FCC's Designated Federal Officer for Technological Advisory Council by email: *michael.ha@fcc.gov* or U.S. Postal Service Mail (Michael Ha, Federal Communications Commission, Room 2–A665, 445 12th Street SW, Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2019–11711 Filed 6–4–19; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of 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.:* 010714–048.

*Agreement Name:* Trans-Atlantic American Flag Liner Operators.

*Parties:* American President Lines, LLC; American Roll-On Roll-Off Carrier, LLC; and Hapag-Lloyd USA, LLC.

*Filing Party:* Eric Jeffrey; Nixon Peabody.

*Synopsis:* The amendment deletes Maersk Line A/S as a party to the Agreement and updates the corporate name of APL.

*Proposed Effective Date:* 5/29/2019.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1132.*

*Agreement No.:* 008493–032.

*Agreement Name:* Trans-Pacific American Flag Berth Operators Agreement.

*Parties:* American President Lines, LLC and Matson Navigation Company, Inc.

*Filing Party:* Eric Jeffrey; Nixon Peabody.

*Synopsis:* The amendment deletes Maersk Line A/S as a party to the Agreement and updates the corporate name of APL.

*Proposed Effective Date:* 5/29/2019.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/80.*

*Agreement No.:* 201249–001.

*Agreement Name:* Port of Los Angeles Data Delivery Agreement.

*Parties:* APM Terminals Pacific Ltd.; Fenix Marine Services, Ltd.; Everport Terminal Services, Ltd.; Trapac LLC; West Basin Container Terminal LLC; Yusen Terminals LLC; and Port of Los Angeles.

*Filing Party:* Jeff Vogel; Cozen O'Connor.

*Synopsis:* The amendment extends the Agreement through June 10, 2020, with an option to extend for an additional year with written notification to the FMC. The amendment also increases the total amount paid under the agreement based on the extension, and updates the names and/or addresses of some of the parties. The parties request expedited review.

*Proposed Effective Date:* 7/14/2019.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10158.*

Dated: May 31, 2019.

**Rachel Dickon,**

*Secretary.*

[FR Doc. 2019–11722 Filed 6–4–19; 8:45 am]

**BILLING CODE 6731–AA–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 2019.

*A. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Deborah Ford, Alamosa, Colorado;* to retain voting shares of Alamosa Bancorporation, Ltd., Alamosa, Colorado, as a member of the Ford Family Group, and *Jamie Cox, Albuquerque, New Mexico, and Brenda Holcomb, San Antonio, Texas;* to retain voting shares as members of the Nielson Family Group, and thereby retain shares of Alamosa Bancorporation, Ltd., Alamosa, Colorado. Alamosa Bancorporation, Ltd. controls the Alamosa State Bank, Alamosa, Colorado.

Board of Governors of the Federal Reserve System, May 31, 2019.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2019–11733 Filed 6–4–19; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2019.

*A. Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *HSB Merger Company, Hershey, Nebraska;* to become a bank holding company by acquiring voting shares of Amerigroup, Inc., and thereby indirectly acquire Hershey State Bank, both of Hershey, Nebraska.

Board of Governors of the Federal Reserve System, May 31, 2019.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2019–11734 Filed 6–4–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–19–0612]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled [*Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program*] to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 26, 2018 to obtain comments from the public and affected agencies. CDC

received one comment related to the previous notice and it was acknowledged by CDC. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

Well-Integrated Screening and Evaluation for Women Across the Nation (OMB Control No. 0920–0612, Expiration date 12/31/2018)—Reinstatement—NCCDPHP, Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The WISEWOMAN program sponsored by the CDC, provides services to low income, uninsured, or underinsured women aged 40–64. The WISEWOMAN program is designed to prevent, detect, and control hypertension and other cardiovascular disease (CVD) risk factors through healthy behavior support services which are tailored for individual and group behavior change. The WISEWOMAN program provides services to women who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), which is also administered by CDC.

The WISEWOMAN program is administered by state health departments and tribal programs. In 2018, new five-year cooperative agreements were awarded under Funding Opportunity Announcement DP18–1816, subject to the availability of funds. CDC collects two types of information from WISEWOMAN awardees. The WISEWOMAN awardee submits an electronic data file to CDC twice per year. The Minimum Data Elements (MDE) file contains data using a unique identifier with client-level information about cardiovascular disease risk factors, types of healthy behavior support services for participants served by the program. The estimated burden per response for the MDE file is 24 hours. The Annual Progress Report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals. The estimated burden per response is 16 hours.

There are no changes to the information collected. CDC will continue to use the information collected from WISEWOMAN awardees to support program monitoring and improvement activities, evaluation, and assessment of program outcomes. The overall program evaluation helps to demonstrate program accomplishments and strengthen the evidence for strategy implementation for improved engagement of underserved populations. It can also determine whether the identified strategies and associated activities can be implemented at various levels within a state or tribal organization. Evaluation is also designed to demonstrate how WISEWOMAN can obtain cardiovascular disease health outcome data on at-risk populations, promote public education about cardiovascular disease risk-factors, and improve the availability of healthy behavior support services for under-served women.

This reinstatement is requested for three years. Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time. The total annualized burden hours are 1,344.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) |
|---|---|---|---|---|
| WISEWOMAN Awardees | Screening and Assessment and Lifestyle Program MDEs. | 21 | 2 | 24 |
| | Annual Progress Report | 21 | 1 | 16 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11646 Filed 6–4–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–1150; Docket No. CDC–2019–0047]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys. This will allow for survey development, pre-testing activities, and survey administration to be carried out during the years 2020–2022 by the Division of Vector-Borne Diseases (DVBD), National Center for Emerging and Zoonotic Diseases (NCEZID), Centers for Disease Control and Prevention (CDC). The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions.

**DATES:** CDC must receive written comments on or before August 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0047 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Generic Clearance for Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention (CDC) Division of Vector-Borne Diseases (DVBD) and other programs working on tickborne diseases (TBDs) are requesting a three year extension without change for a generic clearance to conduct TBD prevention studies to include knowledge, attitudes, and practices (KAP) surveys regarding ticks and tickborne diseases (TBDs) among residents and businesses offering pest control services in Lyme disease endemic areas of the United States. The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions. TBDs are a substantial and growing public health problem in the United States. From 2004–2016, over 490,000 cases of TBDs were reported to CDC, including cases of anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, Rocky Mountain spotted fever, and tularemia (CDC, 2018). Lyme disease accounted for 82% of all TBDs, with over 400,000 cases reported during this time period. In addition, several novel tickborne pathogens have recently been found to cause human disease in the United States. Factors driving the emergence of TBDs are not well defined and current prevention methods have been insufficient to curb the increase in cases. Data is lacking on how often certain prevention measures are used by individuals at risk as well as what the barriers to using certain prevention measure are.

The primary target population for these data collections are individuals and their household members who are at risk for TBDs associated with I. scapularis ticks and who may be exposed to these ticks residentially, recreationally, and/or occupationally. The secondary target population includes owners and employees of businesses offering pest control services to residents in areas where I. scapularis ticks transmit diseases to humans. Specifically, these target populations include those residing or working in the 15 highest incidence states for Lyme disease (CT, DE, ME, MD, MA, MN, NH, NJ, NY, PA, RI, VT, VA, WI and WV). We anticipate conducting one to two surveys per year, for a maximum of six surveys conducted over a three year period. Depending on the survey, we aim to enroll 500–10,000 participants per study. It is expected that we will need to target recruitment to about twice as many people as we intend to enroll. Surveys may be conducted daily, weekly, monthly, or bi-monthly per participant for a defined period of time (whether by phone or web survey), depending on the survey or study. The surveys will range in duration from approximately 5–30 minutes. Each participant may be surveyed 1–64 times

in one year; this variance is due to differences in the type of information collected for a given survey. Specific burden estimates for each study and each information collection instrument will be provided with each individual project submission for OMB review. Insights gained from KAP surveys will aid in prioritizing which prevention methods should be evaluated in future randomized, controlled trials and ultimately help target promotion of proven prevention methods that could yield substantial reductions in TBD incidence.

The maximum estimated, annualized burden hours are 98,830 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents * | Number of responses per respondent * | Average burden per response (in hours) * | Total burden hours |
|---|---|---|---|---|---|
| General public, individuals or households. | Screening instrument (Attachment 1). | 20,000 | 1 | 15/60 | 5,000 |
| | Consent form (Attachment 2) | 10,000 | 1 | 20/60 | 3,330 |
| | Introductory Surveys (Attachment 3) | 10,000 | 1 | 30/60 | 5,000 |
| | Monthly surveys (Attachment 4) | 10,000 | 12 | 15/60 | 30,000 |
| | Final surveys (Attachment 5) | 10,000 | 1 | 30/60 | 5,000 |
| | Daily surveys (Attachment 6) | 10,000 | 60 | 5/60 | 50,000 |
| Pest Control Operators | PCO Survey (Attachment 7) | 1,000 | 1 | 30/60 | 500 |
| Total | | | | | 98,830 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11647 Filed 6–4–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–0666; Docket No. CDC–2019–0040]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Healthcare Safety Network (NHSN). NHSN is a public health surveillance system that collects, analyzes, reports, and makes available data for monitoring, measuring, and responding to healthcare associated infections (HAIs), antimicrobial use and resistance, blood transfusion safety events, and the extent to which healthcare facilities adhere to infection prevention practices and antimicrobial stewardship.

**DATES:** Written comments must be received on or before August 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019- by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*. Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

National Healthcare Safety Network (NHSN)—Revision—National Center for

Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC) collects data from healthcare facilities in the National Healthcare Safety Network (NHSN) under OMB Control Number 0920–0666. During the early stages of its development, NHSN began as a voluntary surveillance system in 2005 managed by DHQP. NHSN provides facilities, states, regions, and the nation with data necessary to identify problem areas, measure the progress of prevention efforts, and ultimately eliminate healthcare-associated infections (HAIs) nationwide. NHSN allows healthcare facilities to track blood safety errors and various healthcare-associated infection prevention practice methods such as healthcare personnel influenza vaccine status and corresponding infection control adherence rates.

NHSN currently has six components: Patient Safety (PS), Healthcare Personnel Safety (HPS), Biovigilance (BV), Long-Term Care Facility (LTCF), Outpatient Procedure (OPC), and the Dialysis Component. NHSN's new Neonatal Component is expected to launch during the summer of 2020. This component will focus on premature neonates and the healthcare-associated events that occur as a result of their prematurity. This component will be released with one module, which includes Late Onset-Sepsis and Meningitis. Late-onset sepsis (LOS) and Meningitis are common complications of extreme prematurity. Studies have indicated that 36% of extremely low gestational age (22–28 weeks) infants develop LOS and that 21% of very low birth weight infants surviving beyond 3 days of life will develop LOS.[1] Meningitis occurs in 23% of bacteremic infants, but 38% of infants with a pathogen isolated from the cerebrospinal fluid may not have an organism isolated from blood. These infections are usually serious, causing a prolongation of hospital stay, increased cost, and risk of morbidity and mortality.

Some cases of LOS can be prevented through proper central line insertion and maintenance practices. These are addressed in the CDC's Healthcare Infection Control Practices Advisory Committee (CDC/HICPAC) *Guidelines for the Prevention of Intravascular Catheter-Related Infections, 2011.* However, almost one-third of LOS events in a quality-improvement study were not related to central-lines. Prevention strategies for the non-central line-related infection events have yet to be fully defined, but include adherence to hand-hygiene, parent and visitor education, and optimum nursery design features. Other areas that likely influence the development of LOS include early enteral nutritional support and skin care practices. The data for this module will be electronically submitted, and manual data entry will not be available. This will allow more hospital personnel to be available to care for patients and will reduce annual burden across healthcare facilities. Additionally, LOS data will be utilized for prevention initiatives.

Data reported under the Patient Safety Component are used to determine the magnitude of the healthcare-associated adverse events and trends in the rates of the events, in the distribution of pathogens, and in the adherence to prevention practices. Data will help detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data is being used to describe the epidemiology of antimicrobial use and resistance and to better understand the relationship of antimicrobial therapy to this rising problem. Under the Healthcare Personnel Safety Component, protocols and data on events—both positive and adverse—are used to determine (1) the magnitude of adverse events in healthcare personnel, and (2) compliance with immunization and sharps injuries safety guidelines. Under the Biovigilance Component, data on adverse reactions and incidents associated with blood transfusions are reported and analyzed to provide national estimates of adverse reactions and incidents. Under the Long-Term Care Facility Component, data is captured from skilled nursing facilities. Reporting methods under the LTCF component have been created by using forms from the PS Component as a model with modifications to specifically address the specific characteristics of LTCF residents and the unique data needs of these facilities reporting into NHSN. The Dialysis Component offers a simplified user interface for dialysis users to streamline their data entry and analyses processes as well as provide options for expanding in the future to include dialysis surveillance in settings other than outpatient facilities. The Outpatient Procedure Component (OPC) gathers data on the impact of infections and outcomes related to operative procedures performed in Ambulatory Surgery Centers (ASCs). The OPC is used to monitor two event types: Same Day Outcome Measures and Surgical Site Infections (SSIs).

NHSN has increasingly served as the operating system for HAI reporting compliance through legislation established by the states. As of March 2019, 36 states, the District of Columbia and the City of Philadelphia, Pennsylvania have opted to use NHSN as their primary system for mandated reporting. Reporting compliance is completed by healthcare facilities in their respective jurisdictions, with emphasis on those states and municipalities acquiring varying consequences for failure to use NHSN. Additionally, healthcare facilities in five U.S. territories (Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) are voluntarily reporting to NHSN. Additional territories are projected to follow with similar use of NHSN for reporting purposes.

NHSN's data is used to aid in the tracking of HAIs and guide infection prevention activities/practices that protect patients. The Centers for Medicare and Medicaid Services (CMS) and other payers use these data to determine incentives for performance at healthcare facilities across the U.S. and surrounding territories, and members of the public may use some protected data to inform their selection among available providers. Each of these parties is dependent on the completeness and accuracy of the data. CDC and CMS work closely and are fully committed to ensuring complete and accurate reporting, which are critical for protecting patients and guiding national, state, and local prevention priorities.

CMS collects some HAI data and healthcare personnel influenza vaccination summary data, which is done on a voluntary basis as part of its Fee-for-Service Medicare quality reporting programs, while others may report data required by a federal mandate. Facilities that fail to report quality measure data are subject to partial payment reduction in the applicable Medicare Fee-for-Service payment system. CMS links their quality reporting to payment for Medicare-eligible acute care hospitals, inpatient rehabilitation facilities, long-term acute care facilities, oncology hospitals, inpatient psychiatric facilities, dialysis facilities, and ambulatory surgery centers. Facilities report HAI data and healthcare personnel influenza vaccination summary data to CMS via NHSN as part

of CMS's quality reporting programs to receive full payment. Still, many healthcare facilities, even in states without HAI reporting legislation, submit limited HAI data to NHSN voluntarily.

NHSN's data collection updates continue to support the incentive programs managed by CMS. For example, survey questions support requirements for CMS' quality reporting programs. Additionally, CDC has collaborated with CMS on a voluntary National Nursing Home Quality Collaborative, which focuses on recruiting nursing homes to report HAI data to NHSN and to retain their continued participation. This project has resulted in a significant increase in long-term care facilities reporting to NHSN. The collection of information is authorized by the Public Health Service Act (42 U.S.C. 242b, 242k, and 242m (d)), (*Attachment A*).

The ICR previously approved in November of 2018 included revisions to 34 data collection forms and the addition of one new Patient Safety form for a total of 73 proposed data collection forms. The proposed revisions to the information collection tools in NHSN include 38 changes to previously approved data collection tools. Incorporating all proposed revisions, the estimated burden for reporting reflects a decrease in hours by 2,472,007 hours for a total annual burden of 3,031,463 hours. Subsequently, the estimated cost burden reflects a decrease of $86,726,153 for a total annual cost of $110,756,566.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form No. and name | Number of respondents | Number of responses per respondent | Average burden per response (min./hour) | Total burden (hours) |
|---|---|---|---|---|
| 57.100 NHSN Registration Form | 2,000 | 1 | 5/60 | 167 |
| 57.101 Facility Contact Information | 2,000 | 1 | 10/60 | 333 |
| 57.103 Patient Safety Component—Annual Hospital Survey | 5,175 | 1 | 75/60 | 6,469 |
| 57.105 Group Contact Information | 1,000 | 1 | 5/60 | 83 |
| 57.106 Patient Safety Monthly Reporting Plan | 6,000 | 12 | 15/60 | 18,000 |
| 57.108 Primary Bloodstream Infection (BSI) | 5,775 | 5 | 38/60 | 18,288 |
| 57.111 Pneumonia (PNEU) | 1,800 | 30 | 30/60 | 27,000 |
| 57.112 Ventilator-Associated Event | 5,500 | 5 | 28/60 | 12,833 |
| 57.113 Pediatric Ventilator-Associated Event (PedVAE) | 334 | 120 | 30/60 | 20,040 |
| 57.114 Urinary Tract Infection (UTI) | 5,500 | 5 | 20/60 | 9,167 |
| 57.115 Custom Event | 600 | 91 | 35/60 | 31,850 |
| 57.116 Denominators for Neonatal Intensive Care Unit (NICU) | 220 | 12 | 249/60 | 10,956 |
| 57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC) | 165 | 12 | 302/60 | 9,966 |
| 57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA) | 5,500 | 60 | 302/60 | 1,661,000 |
| 57.120 Surgical Site Infection (SSI) | 4,500 | 11 | 35/60 | 28,875 |
| 57.121 Denominator for Procedure | 4,500 | 680 | 10/60 | 510,000 |
| 57.122 HAI Progress Report State Health Department Survey | 55 | 1 | 45/60 | 41 |
| 57.123 Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables | 1,500 | 12 | 5/60 | 1,500 |
| 57.124 Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables | 2,000 | 12 | 5/60 | 2,000 |
| 57.125 Central Line Insertion Practices Adherence Monitoring | 500 | 213 | 25/60 | 44,375 |
| 57.126 MDRO or CDI Infection Form | 720 | 12 | 30/60 | 4,320 |
| 57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring | 5,500 | 29 | 15/60 | 39,875 |
| 57.128 Laboratory-identified MDRO or CDI Event | 4,800 | 87 | 20/60 | 139,200 |
| 57.129 Adult Sepsis | 50 | 250 | 25/60 | 5,208 |
| 57.137 Long-Term Care Facility Component—Annual Facility Survey | 2,220 | 1 | 120/60 | 4,440 |
| 57.138 Laboratory-identified MDRO or CDI Event for LTCF | 2,150 | 24 | 15/60 | 12,900 |
| 57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF | 2,200 | 12 | 20/60 | 8,800 |
| 57.140 Urinary Tract Infection (UTI) for LTCF | 400 | 12 | 30/60 | 2,400 |
| 57.141 Monthly Reporting Plan for LTCF | 2,220 | 12 | 5/60 | 2,220 |
| 57.142 Denominators for LTCF Locations | 2,220 | 12 | 250/60 | 111,000 |
| 57.143 Prevention Process Measures Monthly Monitoring for LTCF | 375 | 12 | 5/60 | 375 |
| 57.150 LTAC Annual Survey | 500 | 1 | 70/60 | 583 |
| 57.151 Rehab Annual Survey | 1,200 | 1 | 70/60 | 1,400 |
| 57.200 Healthcare Personnel Safety Component Annual Facility Survey | 50 | 1 | 480/60 | 400 |
| 57.203 Healthcare Personnel Safety Monthly Reporting Plan | ..... | 1 | 5/60 | ..... |
| 57.204 Healthcare Worker Demographic Data | 50 | 200 | 20/60 | 3,333 |
| 57.205 Exposure to Blood/Body Fluids | 50 | 50 | 60/60 | 2,500 |
| 57.206 Healthcare Worker Prophylaxis/Treatment | 50 | 30 | 15/60 | 375 |
| 57.207 Follow-Up Laboratory Testing | 50 | 50 | 15/60 | 625 |
| 57.210 Healthcare Worker Prophylaxis/Treatment-Influenza | 50 | 50 | 10/60 | 417 |
| 57.300 Hemovigilance Module Annual Survey | 500 | 1 | 85/60 | 708 |
| 57.301 Hemovigilance Module Monthly Reporting Plan | 500 | 12 | 1/60 | 100 |
| 57.303 Hemovigilance Module Monthly Reporting Denominators | 500 | 12 | 70/60 | 7,000 |
| 57.305 Hemovigilance Incident | 500 | 10 | 10/60 | 833 |
| 57.306 Hemovigilance Module Annual Survey—Non-acute care facility | 500 | 1 | 35/60 | 292 |
| 57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction | 500 | 4 | 20/60 | 667 |
| 57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction | 500 | 4 | 20/60 | 667 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form No. and name | Number of respondents | Number of responses per respondent | Average burden per response (min./hour) | Total burden (hours) |
|---|---|---|---|---|
| 57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction | 500 | 2 | 20/60 | 333 |
| 57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction | 500 | 4 | 20/60 | 667 |
| 57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.313 Hemovigilance Adverse Reaction—Infection | 500 | 1 | 20/60 | 167 |
| 57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura | 500 | 1 | 20/60 | 167 |
| 57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea | 500 | 1 | 20/60 | 167 |
| 57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease | 500 | 1 | 20/60 | 167 |
| 57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury | 500 | 1 | 20/60 | 167 |
| 57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload | 500 | 2 | 20/60 | 333 |
| 57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction | 500 | 1 | 20/60 | 167 |
| 57.400 Outpatient Procedure Component—Annual Facility Survey | 700 | 1 | 10/60 | 117 |
| 57.401 Outpatient Procedure Component—Monthly Reporting Plan | 700 | 12 | 15/60 | 2,100 |
| 57.402 Outpatient Procedure Component Same Day Outcome Measures | 200 | 1 | 40/60 | 133 |
| 57.403 Outpatient Procedure Component—Monthly Denominators for Same Day Outcome Measures | 200 | 400 | 40/60 | 53,333 |
| 57.404 Outpatient Procedure Component—SSI Denominator | 700 | 100 | 40/60 | 46,667 |
| 57.405 Outpatient Procedure Component—Surgical Site (SSI) Event | 700 | 5 | 40/60 | 2,333 |
| 57.500 Outpatient Dialysis Center Practices Survey | 7,100 | 1 | 127/60 | 15,028 |
| 57.501 Dialysis Monthly Reporting Plan | 7,100 | 12 | 5/60 | 7,100 |
| 57.502 Dialysis Event | 7,100 | 30 | 25/60 | 88,750 |
| 57.503 Denominator for Outpatient Dialysis | 7,100 | 12 | 10/60 | 14,200 |
| 57.504 Prevention Process Measures Monthly Monitoring for Dialysis | 1,760 | 12 | 75/60 | 26,400 |
| 57.505 Dialysis Patient Influenza Vaccination | 860 | 60 | 10/60 | 8,600 |
| 57.506 Dialysis Patient Influenza Vaccination Denominator | 860 | 1 | 5/60 | 72 |
| 57.507 Home Dialysis Center Practices Survey | 430 | 1 | 30/60 | 215 |
| Total Estimated Annual Burden (Hours) | | | | 3,031,463 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11650 Filed 6–4–19; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–19AUK; Docket No. CDC–2019–0041]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Promoting Adolescent Health through School-Based HIV Prevention. CDC will use a web-based system to collect data on the strategies that funded Local Education Agencies (LEAs) are using to meet their goals related to three strategies: Deliver sexual health education emphasizing HIV and other STD prevention (SHE); Increase adolescent access to key sexual health services (SHS); and Establish safe and supportive environments for students and staff (SSE).

**DATES:** CDC must receive written comments on or before August 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0041 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office,

Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Promoting Adolescent Health Through School-Based HIV Prevention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Many young people engage in sexual behaviors that place them at risk for HIV infection, other sexually transmitted diseases (STD), and pregnancy. According to the 2017 Youth Risk Behavior Survey (YRBS), 39.5% of high school students in the United States had ever had sexual intercourse and 28.7% were currently sexually active. Among currently sexually active students, 46.2% did not use a condom, and 13.8% did not use any method to prevent pregnancy the last time they had sexual intercourse. While the proportion of high school students who are sexually active has steadily declined, half of the 20 million new STDs reported each year are among young people between the ages of 15 and 24. Young people aged 13–24 account for 21% of all new HIV diagnoses in the United States, with most occurring among 20–24 year olds.

Establishing healthy behaviors during childhood and adolescence is easier and more effective than trying to change unhealthy behaviors during adulthood. A critical area that offers valuable opportunities for improving adolescent health is at school. Schools have direct contact with over 50 million students for at least six hours a day over 13 key years of their social, physical, and intellectual development. In addition, schools often have staff with knowledge of critical health risk and protective behaviors and have pre-existing infrastructure that can support a varied set of healthful interventions. This makes schools well-positioned to help reduce adolescents' risk for HIV infection and other STD through sexual health education (SHE), access to sexual health services (SHS), and safe and supportive environments (SSE).

Since 1987, the Division of Adolescent and School Health (DASH) in the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention of the Centers for Disease Control and Prevention (CDC), has worked to support for HIV prevention efforts in the Nation's schools. DASH requests OMB approval to collect data over a three-year period from funded agencies under award PS18–1807: Promoting Adolescent Health through School-Based HIV Prevention. Funded agencies are local education agencies (LEAs), also known as school districts. The fundamental purposes of PS18–1807 are to build and strengthen the capacity of LEAs and their priority schools to contribute effectively to the reduction of HIV infection and other STD among adolescents; the reduction of disparities in HIV infection and other STD experienced by specific adolescent sub-population. Priority schools are middle and high schools within the funded LEAs in which youth are at risk for HIV infection and other STD. This funding supports a multi-component, multilevel effort to support youth reaching adulthood in the healthiest possible way.

DASH will use a web-based system to collect data on the strategies that LEAs are using to meet their goals. Strategies include helping LEAs and priority schools deliver sexual health education emphasizing HIV and other STD prevention (SHE); increasing adolescent access to key sexual health services (SHS); and establishing safe and supportive environments for students and staff (SSE). To track funded LEA progress and evaluate the effectiveness of program activities, DASH will be collecting data using a mix of process and outcome measures. LEAs will complete process measures that will assess the extent to which planned program activities have been implemented and lead to feasible and sustainable programmatic outcomes. Process measures include items on school health policy and practice assessment and training and technical assistance received from non-governmental partner organizations. Outcome measures assess whether funded activities at each site are leading to intended outcomes including public health impact of systemic change in schools. The measures tailored to each PS18–1807 strategy (*i.e.,* SHE, SHS, SSE) drove the development of questionnaires that have been.

Respondents are 25 LEAs funded under PS18–1807. Local education agencies will complete the questionnaires semi-annually using the Program Evaluation and Reporting System (PERS), an electronic web-based interface specifically designed for this data collection. Each LEA will receive a unique login to the system and technical assistance to ensure they can use the system easily. To provide timely feedback to LEAs and DASH staff for accountability and optimal use of funds, the requested dates for data reflect the Office of Financial Resources deadlines. DASH anticipates that semi-annual information collection will begin in February 2020 and will describe activities conducted during the period August 2019–July 2022.

The estimated burden per response is approximately 2–26 hours. This estimate includes time for LEAs to gather information at the district and priority school-levels. Annualizing this collection over five years results in an estimated annualized burden of 1,750 hours per year and 5,250 for three years across all funded LEAs. Funded LEAs are required to allocate at least 6% of their NOFO award to support evaluation activities ranging from $15,000 to $21,000. Use of these funds is discretionary, including for collection of process and outcome measures. Funded LEAs are required to spend at least 6% of their award to support evaluation activities, including time to gather and

enter data into the online performance and evaluation reporting system.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| LEA | Funded District Questionnaire | 25 | 2 | 2 | 100 |
| | Priority School Questionnaire | 25 | 2 | 26 | 1,300 |
| | District Assistance Questionnaire | 25 | 2 | 7 | 350 |
| Total | | | | | 1,750 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11648 Filed 6–4–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–19–0106]**

### Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Preventive Health and Health Services Block Grant to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 21, 2019 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

Preventive Health and Health Services Block Grant (OMB Control No. 0920–0106, Exp. 7/31/2019)—Extension—Center for State, Tribal, Local and Territorial Support (CSTLTS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Preventive Health and Health Services Block Grant (PHHSBG), Public Law 102–531, Public Health Service Act, provides funds to 61 awardees (50 states, the District of Columbia, two American Indian Tribes, and eight U.S. territories) and provides funding to address locally-defined public health needs in innovative ways. Block Grants allow awardees to prioritize the use of funds to address leading causes of death and disability. Block Grant funding also provides awardees with the ability to respond rapidly to emerging health issues, including outbreaks of diseases or pathogens. The PHHS Block Grant program is authorized by sections 1901–1907 of the Public Health Service Act.

CDC currently collects information from Block Grant awardees to monitor their objectives and activities (Preventive Health and Health Services Block Grant, OMB No. 0920–0106, exp. 7/31/2019). Each awardee is required to submit an annual application for funding (Work Plan) that describes its objectives and the populations to be addressed, and an Annual Report that describes activities, progress toward objectives, and Success Stories which highlight the improvements Block Grant programs have made and the value of program activities. Information is submitted electronically through the web-based Block Grant Information Management System (BGMIS).

The CDC PHHS Block Grant program has benefited from this system by efficiently collecting mandated information in a format that allows data to be easily retrieved in standardized reports. The electronic format verifies completeness of data at data entry prior to submission to CDC, reducing the number of re-submissions that are required to provide concise and complete information.

The Work Plan and Annual Report are designed to help Block Grant awardees attain their goals and meet reporting requirements specified in the program's authorizing legislation. Each Work Plan objective is defined in SMART format (Specific, Measurable, Achievable, Realistic and Time-based), and includes a specified start date and end date. Block Grant activities adhere to the Healthy People (HP) framework established by the Department of Health and Human Services (HHS). The current version of the BGMIS associates each awardee-defined activity with a specific HP National Objective, and identifies the location where funds are applied.

There are no changes to the number of Block Grant awardees (respondents), or the estimated burden per response for the Work Plan or the Annual Report.

The BGMIS does not collect data related to assessing aggregate outcomes. A separate information collection request, designed to assess cross-cutting outputs and outcomes resulting from Block grant has been developed and is undergoing public comment.

Legislation requires awardees to be accountable for funds they receive by evaluating and reporting on program activities and health status on an annual basis. The BGMIS system allows CDC and awardees to measure performance, identifying the extent to which objectives were met and identifying the most highly successful program interventions. CDC requests OMB approval to continue the Block Grant information collection for three years. CDC will continue to use the BGMIS to monitor awardee progress, identify activities and personnel supported with Block Grant funding, conduct compliance reviews of Block Grant awardees, and promote the use of evidence-based guidelines and interventions. There are no changes to the number of respondents or the estimated annual burden per respondent. The Work Plan and the Annual Report will be submitted annually. The estimated burden per response for the Work Plan is 20 hours and the estimated burden per response for the Annual Report is 15 hours.

Participation in this information collection is required for Block Grant awardees. There are no costs to respondents other than their time. Awardees continue to submit Success Stories with their Annual Progress reports through BGMIS, without changes.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| PHHS Block Grant Coordinator | Work Plan | 61 | 1 | 20 |
| PHHS Block Grant Coordinator | Annual Report | 61 | 1 | 15 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11645 Filed 6–4–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–19–19AXA; Docket No. CDC–2019–0046]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled ''Annual Reporting of the Rape Prevention and Education (RPE) Program: CE19–1902 Cooperative Agreement.'' Information will be collected annually from RPE recipients and will provide crucial data for performance monitoring and program evaluation of the implementation of prevention strategies and approaches, outcomes, and budget of the cooperative agreement.

**DATES:** Written comments must be received on or before August 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0046 by any of the following methods:

*Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.

*Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

*Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

*e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

**Proposed Project**

Annual Reporting of the Rape Prevention and Education (RPE) Program: CE19–1902 Cooperative Agreement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

OMB approval is requested for three years for this new collection. The RPE Program, which provides funding to health departments in all 50 states, the District of Columbia (DC), Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands. This ICR will collect information related to implementation and outcomes annually from recipients of the new funding opportunity CDC–RFA–CE19–1902: Rape Prevention and Education (RPE): Using The Best Available Evidence for Sexual Violence Prevention cooperative agreement. This new RPE funding opportunity differs greatly from previous funding opportunities provided by CDC through the RPE Program. Specifically, program activities differ from the previous funding cycles, and the program will be collecting information for the first time on recipient outcomes.

RPE Program recipients or designated delegates will submit data annually into the online data system, DVP Partners Portal. Recipients will monitor and report progress on their goals, objectives, and activities, as well as relevant information on the implementation of their prevention strategies, outcomes, evaluation, and state action plan.

Collecting information about the implementation and outcomes of CE19–1902 cooperative agreement through the online data system, DVP Partners Portal, is crucial to informing Sexual Violence prevention nationally; enhancing accountability of the use of federal funds; providing timely program reports and responses to information requests, such as Congressional requests mandated by the authorizing legislation; improving real-time communications between CDC and RPE recipients; and strengthening CDC's capacity to provide responsive data-driven technical assistance and to monitor and evaluate recipients' progress and performance. The only cost to respondents will be time spent responding to the survey/screener. The total estimated annualized burden hours is 440.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| RPE-funded Health Departments (State, DC, and Territories) and their Designated Delegates. | Annual Reporting—Initial Population | 55 | 1 | 4 | 220 |
| | Annual Reporting—Subsequent Reporting. | 55 | 2 | 2 | 220 |
| Total | | | | | 440 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2019–11649 Filed 6–4–19; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1726–N]**

### Medicare Program; the Announcement of the Annual Advisory Panel on Hospital Outpatient Payment (HOP Panel) Meeting in August 2019 and New Panel Members

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

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the annual public meeting of the Advisory Panel on Hospital Outpatient Payment (the Panel) for 2019. In addition, it announces 6 new membership appointments to the Panel. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of the Ambulatory Payment Classification groups and their associated weights, and supervision of hospital outpatient therapeutic services. The recommendations provided by the Panel will be considered as we prepare the annual updates for the hospital outpatient prospective payment system.

**DATES:**

*Meeting Dates:* The public meeting is scheduled for Monday, August 19, 2019, from 9:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT), and Tuesday, August 20, 2019, from 9:30 a.m. to 12:00 p.m. Eastern Daylight Time (EDT). The times listed in this notice are approximate times. Consequently, the meetings may last longer or be shorter than the times listed in this notice but will not begin before the posted times.

*Deadline for Meeting Registration, Presentations and Comments:* Presentations or comments, and form CMS–20017 (located at *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms20017.pdf*) must be received by 5:00 p.m. EDT on Monday, July 22, 2019. Form CMS–20017 must accompany each presentation or comment submission. Presentations and comments that are not received by the due date and time or that do not include a completed form CMS–20017 will be considered late or incomplete and will not be included on the agenda. In commenting, refer to file code CMS–1726–N.

*Meeting Registration Timeframe:* Monday, June 24, 2019, through Monday, July 29, 2019 at 5 p.m. EDT. Participants planning to attend this meeting in person must register online, during the specified timeframe at: *https://www.cms.gov/apps/events/default.asp.*

On this web page, double click the ''Upcoming Events'' hyperlink, and then double click the ''HOP Panel'' event title link and enter the required information. Include any requests for special accommodations. *Note:* Participants who do not plan to attend the meeting in person should not register. No registration is required for participants

who plan to participate in the meeting via webcast or teleconference.

*Deadline for Requesting Special Accommodations:* Requests for special accommodations must be received no later than Monday, July 30, 2018 at 5:00 p.m. EDT.

**ADDRESSES:**

*Meeting Location, Webcast and Teleconference:* The meeting will be held in the Auditorium at the CMS Single Site Campus, 7500 Security Boulevard, Baltimore, MD 21244. Alternately, the public may either view this meeting via webcast or listen by teleconference. During the scheduled meeting, webcasting is accessible online at: *http://cms.gov/live.* Teleconference instructions will be available approximately one week prior to the meeting, on the CMS website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPayment ClassificationGroups.html.*

*News Media:* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

*Advisory Committees Information Line:* The telephone number for the Advisory Panel on Hospital Outpatient Payment Committee Hotline is (410) 786–3985.

*Websites:* For additional information on the Panel, including the Panel charter, teleconference dial-in information that will appear on the final meeting agenda, and updates to the Panel's activities, we refer readers to view our website at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Advisory PanelonAmbulatoryPayment ClassificationGroups.html.* Information about the Panel and its membership in the Federal Advisory Committee Act database are also located at: *http://facadatabase.gov.*

*Registration:* The meeting is open to the public but attendance is limited to the space available and registration is required. Priority will be given to those who pre-register and attendance may be limited based on the number of registrants and the space available. Persons wishing to attend this meeting, which is located on federal property, must register by following the instructions in the **DATES** section of this notice under ''Meeting Registration Timeframe.'' A confirmation email will be sent to the registrants shortly after completing the registration process.

**FOR FURTHER INFORMATION CONTACT:**

Elise Barringer, Designated Federal Official (DFO), (410) 786–9222, email at *APCPanel@cms.hhs.gov.* Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop: C4–04–25, Baltimore, MD 21244–1850.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and is allowed by section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside panel, such as the Advisory Panel on Hospital Outpatient Payment (the Panel), regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The Panel is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), to set forth standards for the formation and use of advisory panels.

The Secretary rechartered the Panel in 2018 for a 2-year period effective through November 20, 2020. The current charter is available on the CMS website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Downloads/2018-HOP-Panel-Charter.* On January 26, 2018, we published a notice in the **Federal Register** entitled, ''Medicare Program; Request for Nominations to the Advisory Panel on Hospital Outpatient Payment'' (83 FR 3715). The notice solicited nominations for Panel members on a continuous basis to fill the vacancies on the Panel. The notice also stated that the Centers for Medicare & Medicaid Services (CMS) would consider the nominations submitted in response to the December 23, 2016 notice published in the **Federal Register** entitled, ''Medicare Program; Renewal of the Advisory Panel on Hospital Outpatient Payment and Solicitation of Nominations to the Advisory Panel on Hospital Outpatient Payment'' (81 FR 94378), unless they were withdrawn or the nominees' qualifications had changed. The 6 new members announced in this notice will each serve a 4-year period, with terms that begin in Calendar Year (CY) 2019 and end in CY 2023. We will consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the Hospital Outpatient Prospective Payment System (OPPS) for the following CY.

## II. Annual Advisory Panel Meeting

### *A. Meeting Agenda*

The agenda for the August 19, 2019 through August 20, 2019 Panel meeting will be posted on the CMS website at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Advisory PanelonAmbulatoryPayment ClassificationGroups.html* approximately 1 week before the meeting. The Agenda will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Reconfiguring APCs (for example, splitting APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another, and moving HCPCS codes from new technology APCs to clinical APCs).
- Evaluating APC group weights.
- Reviewing packaging the cost of items and services, including drugs and devices into procedures and services, including the methodology for packaging and the impact of packaging the cost of those items and services on APC group structure and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using claims and cost report data for CMS's determination of APC group costs.
- Addressing other technical issues concerning APC group structure.
- Evaluating the required level of supervision for hospital outpatient services.
- OPPS APC rates for covered ASC procedures.

### *B. Presentations and Comment Letters*

The subject matter of any presentation and comment matter must be within the scope of the Panel designated in the charter. Any presentations or comments outside of the scope of the Panel will be returned or requested for amendment. Unrelated topics include but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, supervision of hospital outpatient diagnostic services, and the types of practitioners that are permitted to supervise hospital outpatient services. The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services. Presentations or comment letters that address OPPS APC rates as they relate to covered ASC procedures are within the scope of the panel; however, ASC payment rates, ASC payment indicators, the ASC covered procedures list, or other ASC payment system matters will be considered out of scope.

The Panel may use data collected or developed by entities and organizations other than the Department of Health and Human Services (DHHS) and CMS in conducting its review. We recommend organizations submit data for CMS staff and the Panel's review. All presentations are limited to 5 minutes, regardless of the number of individuals or organizations represented by a single presentation. Presenters may use their 5 minutes to represent either one or more agenda items.

Section 508 Compliance

For this meeting, we are aiming to have all presentations and comments available on the CMS website. Materials on our website must be Section 508 compliant to ensure access to federal employees and members of the public with and without disabilities. We encourage presenters and commenters to reference the guidance on making documents Section 508 compliant as they draft their submissions, and, whenever possible, to submit their presentations and comments in a 508 compliant form. The guidance is available at: *http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/Section508/508-Compliant-doc.html.* We will review presentations and comments for 508 compliance and place compliant materials on the CMS website. As resources permit, we will also convert non-compliant submissions to 508 compliant forms and offer assistance to submitters who wish to make their submissions 508 compliant. All 508 compliant presentations and comments will be shared with the public onsite, webcasted, and made available on the CMS website. Those wishing to access such materials should contact the DFO (the DFO's address, email, and phone number are provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice).

In order to consider presentations and/or comments, we will need to receive the following:

1. *An email* copy of the presentation or comments sent to the DFO mailbox, *APCPanel@cms.hhs.gov* or, if unable to submit by email, a hard copy sent to the DFO at the address noted in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2. Form *CMS–20017* with complete contact information that includes name, address, phone number, and email addresses for all presenters and commenters and a contact person that can answer any questions, and provide revisions that are requested, for the presentation or comment letter. Presenters and commenters must clearly explain the actions that they are requesting CMS to take in the appropriate section of the form. A presenter's or commenter's relationship with the organization that they represent must also be clearly listed.

- The form is now available through the CMS Forms website at: *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/downloads/cms20017.pdf.*
- We encourage submitters to make efforts to ensure that their presentations and comments are 508 compliant.

*C. Oral Comments*

In addition to formal oral presentations (limited to 5 minutes total per presentation), there will be an opportunity during the meeting for public oral comments (limited to 1 minute for each individual) and a total of 3 minutes per organization.

*D. Panel Recommendations and Discussions*

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, before the final adjournment. These recommendations will be posted to the CMS website after the meeting.

*E. Security, Building, and Parking Guidelines*

The meeting is open to the public but attendance is limited to the space available. Persons wishing to attend this meeting in person must register within the noted timeframe, by following the instructions in the **DATES** section of this notice under ''Meeting Registration Timeframe.''

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. Individuals who are not registered in advance may not be permitted to enter the building and would be unable to attend the meeting. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting to allow additional time to clear security. Security measures include the following:

- Presentation of valid government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

*Note: Individuals who are not registered in advance may not be permitted to enter the building and would be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.*

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

## II. Nominees and Membership Appointments to the Advisory Panel on Hospital Outpatient Payment

*A. Panel Appointments Requirements*

The Panel shall consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. The panel may also include a representative of the provider with ASC expertise, who shall advise CMS only on OPPS APC rates, as appropriate, impacting ASC covered procedures within the context and purview of the panel's scope. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations of candidates determined to have the required expertise. For supervision deliberations, the Panel shall also include members that represent the interests of Critical Access Hospitals (CAHs), who advise CMS only regarding the level of supervision for hospital outpatient therapeutic services.

New appointments are made in a manner that ensures a balanced membership under the FACA guidelines.

The Panel consists of the following current members and a Chair:

- E. L. Hambrick, M.D., J.D., CMS Chairperson
- Shelly Dunham, R.N.
- Kenneth Michael Flowe, M.D., M.B.A.
- Erika Hardy, R.H.I.A.
- Karen A. Lambert
- Ruth Lande
- Scott Manaker, M.D., Ph.D.
- Agatha L. Nolen, Ph.D., D.Ph.
- Richard Nordahl, M.B.A.
- Michael Schroyer, R.N.

*B. Request and Submission of the Panel Nominations*

The Request for Nominations to the Advisory Panel on Hospital Outpatient Payment notice (83 FR 3715) provides for nominations to be accepted on a continuous basis to fill upcoming panel vacancies. CMS encourages additional submissions. Any interested person or organization may nominate qualified individuals. Self-nominations from qualified individuals are also accepted. Additional information including criteria for nominees as well as submission requirements are available in the notice, which is accessible from the CMS website at: *https://www.govinfo.gov/content/pkg/FR-2018-01-26/pdf/2018-01474.pdf.*

As a result of that notice, we are announcing 6 new members to the Panel. These 6 new Panel member appointments will assure that we continue to have a Chair and up to 15 members available to attend our scheduled meeting.

New Appointments to the Panel

New members of the Panel will have terms beginning on March 1, 2019 and continuing through February 28, 2023. The new members of the Panel are as follows:

- Terry Bohlke, CPA, CMA, MHA, CASC
- Carmen Cooper-Oguz, PT, DPT, MBA, CWS, WCC
- Paul Courtney, M.D.
- Peter Duffy, M.D.
- Lisa Gangarosa, M.D.
- Michael Kuettel, M.D., MBA, Ph.D.

## IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: May 31, 2019.

**Paul Mango,**

*Chief Principal Deputy Administrator and Chief of Staff, Centers for Medicare & Medicaid Services.*

[FR Doc. 2019–11756 Filed 6–4–19; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0125]**

## Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 5, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0775. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007

*OMB Control Number 0910–0775—Extension*

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a chapter granting FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 201(rr) of the FD&C Act (21 U.S.C.321(rr)), as amended, defines a tobacco product as any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Section 910 of the FD&C Act (21 U.S.C. 387j) sets out premarket requirements for new tobacco products. The term new tobacco product is defined as any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007, or any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007 (section 910(a)(1) of the FD&C Act).

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act (section 901(b) (21 U.S.C. 387a(b)) of the FD&C Act). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976).

FDA refers to tobacco products that were commercially marketed (other than exclusively in test markets) in the United States as of February 15, 2007, as grandfathered tobacco products. Grandfathered tobacco products are not considered new tobacco products and are not subject to the premarket requirements of section 910 of the FD&C Act. The guidance document associated with this information collection provides information on how a manufacturer may establish that a tobacco product was commercially marketed in the United States as of February 15, 2007. A grandfathered

tobacco product may also serve as the predicate tobacco product in a section 905(j) report (intended to be used toward demonstrating substantial equivalence) for a new tobacco product (section 905(j)(1)A)(i) of the FD&C Act (21 U.S.C. 387e(j)(1)(A)(i))).

The guidance recommends that the manufacturer submit information adequate to demonstrate that the tobacco product was commercially marketed in the United States as of February 15, 2007. Examples of such information may include, but are not limited to, the following: dated copies of advertisements, dated catalog pages, dated promotional material, and dated bills of lading.

In the **Federal Register** of October 17, 2018 (83 FR 52488), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two comments were received; however, they were not PRA related.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| FD&C Act sections or action | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) | Total hours |
|---|---|---|---|---|---|
| Submit evidence of commercial marketing in the United States as of February 15, 2007 | 1,000 | 1 | 1,000 | 5 | 5,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents is based on the fact that requesting an Agency determination of the grandfathered status of a tobacco product under the guidance is not required and also on the number of grandfathered submissions received from 2011 to June 2018. We estimate submissions have increased due to the effective date of the deeming rule. FDA has stated that, for deemed combustible products that were on the market as of August 8, 2016, it does not intend to initiate enforcement for failure to have premarket authorization until August 8, 2021. FDA has also stated that, for deemed noncombustible products that were on the market as of August 8, 2016, it does not intend to initiate enforcement for failure to have premarket authorization until August 8, 2022. Because interested persons are seeking information on the grandfathered status of tobacco products in advance of these dates, FDA expects a drop in the number of grandfathered submissions following those dates. The number of hours to gather the evidence is FDA's estimate of how long it might take a manufacturer to review, gather, and submit dated information if making a request for Agency determination.

FDA further estimates it would take a manufacturer approximately 5 hours to put together this collection of evidence and to submit the package to FDA for review. FDA estimates that it would take approximately 5,000 hours annually to respond to this collection of information.

Our estimated burden for the information collection reflects an overall increase of 4,235 hours. We attribute this adjustment to an updated number of submissions received through this approval and the number of submissions expected in the next 3 years.

Dated: May 30, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–11659 Filed 6–4–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0147]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Fax written comments on the collection of information by July 5, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0673. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products

*OMB Control Number 0910–0673—Extension*

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a chapter granting FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

The FD&C Act, as amended by the Tobacco Control Act, generally requires that before a new tobacco product may be introduced or delivered for introduction into interstate commerce, the new tobacco product must undergo premarket review by FDA. FDA must issue an order authorizing the commercial distribution of the new

tobacco product or find the product exempt from the requirements of substantial equivalence under section 910(a)(2)(A) of the FD&C Act (21 U.S.C. 387j(a)(2)(A)) before the product may be introduced into commercial distribution (section 910 of the FD&C Act).

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act (section 901(b) of the FD&C Act (21 U.S.C. 387a(b))). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976) (''the Deeming final rule'').

The FD&C Act authorizes three premarket pathways for a new tobacco product to legally enter the market. Submission of a section 905(j)(1)(A)(i) report intended to demonstrate substantial equivalence and, in response, an order from the Agency finding that the new tobacco product is substantially equivalent to a predicate tobacco product and in compliance with the requirements of the FD&C Act, is one pathway. Under section 905(j)(1)(A)(i) of the FD&C Act (21 U.S.C. 387e(j)(1)(A)(i)), a tobacco product manufacturer must show that a new tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary of Health and Human Services has previously determined, under subsection (a)(3) of section 910, is substantially equivalent and that it is in compliance with the requirements of the FD&C Act. The comparison product chosen by the tobacco product manufacturer is referred to by FDA as the predicate tobacco product.

The guidance document associated with this collection of information contains recommendations on preparing reports intended to demonstrate substantial equivalence to a predicate tobacco product as required under section 905(j)(1)(A)(i) of the FD&C Act. FDA's guidance entitled ''Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions'' (December 2016) may be accessed at *https://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.* In that guidance, FDA recommends that certain modifications might be addressed in a ''Product Quantity Change Report,'' which is a more streamlined Substantial Equivalence (SE) Report for certain modifications that should be easier for manufacturers to prepare.

In the **Federal Register** of September 6, 2018 (83 FR 45251), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received seven comments that were PRA related. Commenters noted that the burden estimates seem low given current experience and rounds of review by FDA, but that FDA could reduce the current burden by increasing transparency in the SE process by issuing a rulemaking related to SE. These comments concerned the burdens related to the SE program and noted that lack of a rule related to the SE pathway has contributed to that burden. In addition, commenters stated that lack of clarity on the content of SE Reports, including the lack of clarity regarding the information that might be needed when a new tobacco product has ''same characteristics'' or ''different characteristics,'' contributes to that burden.

We believe that recent activities undertaken by FDA will help address these concerns and support maintaining the current estimates, which are averages of burden across a number of years. Specifically, in October 2018, FDA held a public workshop that provided industry stakeholders with additional information on SE content and process (*https://www.fda.gov/TobaccoProducts/NewsEvents/ucm615443.htm*). More recently, FDA issued a notice of proposed rulemaking related to the content and format of SE Reports (84 FR 12740, April 2, 2019), which would establish the required content of SE Reports and explain FDA review practices. This proposed rule also provides potential approaches to addressing same characteristics and different characteristics, along with examples, and considerations FDA may evaluate in determining whether difference(s) in characteristics cause the new tobacco product to raise different questions of public health. FDA is seeking comment on that proposed rule.

In addition, we note that several of the commenters are cigar industry stakeholders who indicated that submissions may be higher for cigar products than our current estimates reflect, and we acknowledge that future collections may be further refined to reflect changes in numbers of submissions due to more SE submissions for cigar products related to the Deeming final rule.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Full SE 905(j)(1)(A)(i) and 910(a) | 683 | 1 | 683 | 300 | 204,900 |
| Full SE 905(j)(1)(A)(i) and 910(a) Bundled | 456 | 1 | 456 | 90 | 41,040 |
| Product Quantity Change SE Report | 239 | 1 | 239 | 87 | 20,793 |
| Product Quantity Change Bundled SE Report | 192 | 1 | 192 | 62 | 11,904 |
| Total | | | | | 278,637 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimates are based on experience with SE Reports, initial updated deemed registration and listing data, interactions with the industry, and information related to other regulated products. The estimated number of SE Reports is expected to increase from an annual average of 979 to 1,570.

When groups of full or product quantity change SE Reports have identical content, they may be bundled; when a group of similar reports are bundled, the subsequent bundled reports are expected to take less time to prepare than the initial report.

FDA has based these estimates on information it now has available from interactions with the industry, information related to other regulated products, and FDA expectations regarding the tobacco industry's use of the section 905(j) pathway to market their products. Table 1 describes the annual reporting burden as a result of the implementation of the substantial equivalence requirements of sections 905(j)(1)(A)(i) and 910(a) of the FD&C Act for an SE application.

FDA estimates that 683 respondents will prepare and submit 683 section 905(j)(1)(A)(i) SE Reports each year. In addition, anyone submitting an SE Report is required to submit an environmental assessment (EA) under 21 CFR 25.40. The burden for environmental reports has been included in the burden per response for each type of SE report. Based on FDA's experience with EAs for currently regulated tobacco products, we expect industry to spend 80 hours to prepare an environmental assessment for a SE Report. Thus, FDA estimates that it will take a manufacturer approximately 300 hours per report to prepare an SE Report and the EA for a new tobacco product, which is a total of 204,900 hours each year.

In addition, we estimate receiving 456 Full SE Bundled Reports at 90 hours per submission for a total of 41,040 hours each year.

FDA estimates that it will receive 239 Product Quantity Change SE Reports each year and that it will take a manufacturer approximately 87 hours to prepare this report for a total of 20,793 hours. This includes time to prepare the environmental assessment, which FDA believes will take less time due to the typically more limited modification(s) included in a Product Quantity Change SE Report. We estimate receiving 192 Product Quantity Change Bundled SE Reports each year at approximately 62 hours per submission for a total of 11,904 hours; this number excludes the time for the initial SE Report, which was previously accounted for.

Therefore, FDA estimates the annual burden for submission of SE information will be 278,637 hours. This is an increase of 106,759 hours from the currently approved burden. We attribute this increase to an increase in the number of SE Reports we expect related to Deemed products (*e.g.,* based on the initial registration and listing information).

Dated: May 30, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–11657 Filed 6–4–19; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1588]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Exemptions From Substantial Equivalence Requirements for Tobacco Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 5, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0684. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Exemptions From Substantial Equivalence Requirements for Tobacco Products

*OMB Control Number 0910–0684—Extension*

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

The FD&C Act, as amended by the Tobacco Control Act, requires that before a new tobacco product may be introduced or delivered for introduction into interstate commerce, the new tobacco product must undergo premarket review by FDA. FDA must issue an order authorizing the commercial distribution of the new tobacco product or find the product exempt from the requirements of substantial equivalence under section 910(a)(2)(A) of the FD&C Act, before the product may be introduced into commercial distribution (section 910 of the FD&C Act (21 U.S.C. 387j)).

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to Chapter IX of the FD&C Act (section 901(b) (21 U.S.C. 387a(b))). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976, May 10, 2016) (''the final deeming rule'')).

FDA has established a pathway for manufacturers to request exemptions from the substantial equivalence requirements of the FD&C Act in § 1107.1 (21 CFR 1107.1) of the Agency's regulations. As described in § 1107.1(a), FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, from the requirement of demonstrating substantial equivalence if the Agency determines that: (1) The modification would be a minor modification of a tobacco product that can be sold under the FD&C Act; (2) a report demonstrating substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for the protection of public health; and (3) an exemption is otherwise appropriate.

Section 1107.1(b) states that a request for exemption under section 905(j)(3) of the FD&C Act (21 U.S.C. 387e(j)(3)) may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product and that the manufacturer must submit the request and all information supporting it to FDA. The request must be made in an electronic format that FDA can process, review, and archive (or a written request must be made by the manufacturer explaining in detail why the manufacturer cannot submit the request in an electronic format and requesting an alternative means of submission to the electronic format).

An exemption request must contain: (1) The manufacturer's address and contact information; (2) identification of the tobacco product(s); (3) a detailed explanation of the purpose for the modification; (4) a detailed description of the modification, including a statement as to whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of the existing tobacco additive; (5) a detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the FD&C Act; (6) a detailed explanation of why a report under section 905(j)(1) of the FD&C Act intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; (7) a certification (*i.e.,* a signed statement by a responsible official of the company) summarizing the supporting evidence and providing the rationale for the official's determination that the modification does not increase the tobacco product's appeal to or use by minors, toxicity, addictiveness, or abuse liability; (8) other information justifying an exemption; and (9) an environmental assessment (EA) under part 25 (21 CFR part 25) prepared in accordance with the requirements of § 25.40.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) states national environmental objectives and imposes upon each Federal Agency the duty to consider the environmental effects of its actions. Section 102(2)(C) of NEPA requires the preparation of an environmental impact statement for every major Federal action that will significantly affect the quality of the human environment.

FDA's NEPA regulations are contained in part 25. All applications for exemption from substantial equivalence require the submission of an EA. An EA provides information that is used to determine whether an FDA action could result in a significant environmental impact. Section 25.40(a) and (c) specifies the content requirements for EAs for nonexcluded actions.

The information required by § 1107.1(b) is submitted to FDA so FDA can determine whether an exemption from substantial equivalence to the product is appropriate for the protection of the public health. Section 1107.1(c) states that FDA will review the information submitted and determine whether to grant or deny an exemption based on whether the criteria in section 905(j)(3) of the FD&C Act are met. FDA may request additional information if necessary to make a determination and may consider the exemption request withdrawn if the information is not provided within the requested timeframe.

Section 905(j)(1)(A)(ii) of the FD&C Act states that if an exemption has been requested and granted, a report must be submitted to FDA that demonstrates that the tobacco product is modified within the meaning of section 905(j)(3), the modifications are to a product that is commercially marketed and in compliance with the requirements of the FD&C Act, and all of the modifications are covered by exemptions granted by the Secretary of Health and Human Services (the Secretary) under section 905(j)(3).

In the **Federal Register** of September 13, 2018 (83 FR 46501) FDA published a 60-day notice requesting public comment on the proposed collection of information. Two PRA related comments were received, which inquired about how FDA formulated the PRA estimates. In response to the questions related to the PRA estimates, these estimates are based on our experience. To date, the annual number of exemption requests has been lower than the estimate of 812 respondents in this notice (*https://www.accessdata.fda.gov/scripts/fdatrack/view/track.cfm?program=ctp&id=%20CTP-OS-total-exemption-from-SE-since-Program-Inception*), but the Agency expects that the number of exemption requests could increase as applicants begin to submit such requests for tobacco products subject to the final deeming rule. The estimated number of respondents is intended to reflect that potential. As noted in the comments, the exemption request is anticipated to take less time than the other premarket applications, and FDA believes that 24 hours average burden per response reflects the experience to date.

Along with commenting on the PRA estimates, these comments also state that the Agency should provide additional details on exemption requests and develop categories of exemptions. FDA appreciates these comments but notes that consideration of such new processes is outside the scope of the present information collection. FDA will continue to consider these comments as appropriate in future rulemakings.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section and activity | Number of respondents | Number of responses per respondent [2] | Total annual responses | Average burden per response (in hours) | Total hours |
|---|---|---|---|---|---|
| **§ 1107.1(b) Optional Preparation of Tobacco Product Exemption From Substantial Equivalence Request Including § 25.40 Preparation of an Environmental Assessment** | | | | | |
| 21 CFR 1107.1(b)—Preparation of tobacco product exemption from substantial equivalence request and 21 CFR 25.40—Preparation of an environmental assessment | 812 | 1 | 812 | 24 | 19,488 |
| Total Hours (§ 1107.1(b)) | | | | | 19,488 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| 21 CFR section and activity | Number of respondents | Number of responses per respondent [2] | Total annual responses | Average burden per response (in hours) | Total hours |
|---|---|---|---|---|---|
| **§ 1107.1(c) Preparation of Additional Information for Tobacco Product Exemption From Substantial Equivalence Request** | | | | | |
| 21 CFR 1107.1(c)—Preparation of additional information for tobacco product exemption from substantial equivalence request | 244 | 1 | 244 | 3 | 732 |
| Total Hours (§ 1107.1(c)) | | | | | 732 |
| **Section 905(j)(1)(A)(ii) of the FD&C Act: If exemption granted, report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant, and modifications covered by exemptions granted by Secretary under section 905(j)(3)** | | | | | |
| Abbreviated report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant, and modifications covered by exemptions granted by Secretary under section 905(j)(3) | 1217 | 1 | 1217 | 3 | 3,651 |
| Total Hours (section 905(j)(1)(A)(ii)) of the FD&C Act | | | | | 3,651 |
| Total Hours Exemptions From Substantial Equivalence Requirements | | | | | 23,871 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that we will receive 812 exemption requests under § 1107.1(b) for 24 hours per response including EA for a total of 19,488 hours. Since an EA is required for each § 1107.1(b) (Optional Preparation of Tobacco Product Exemption From Substantial Equivalence Request), the burden per response for EAs (12 hours) has been combined with the 12 hours for an SE request for a total of 24 hours per response.

FDA further estimates that we will receive 244 submissions requiring additional information in support of the initial exemption request, and it is expected that it will take an average of 3 hours to prepare the additional information for a total of 732 hours.

FDA estimates that 1,217 respondents will prepare 1,217 responses and each response will take approximately 3 hours to prepare, as required by section 905(j)(1)(A)(ii) of the FD&C Act, for a total of 3,651 hours.

This collection of information requires a manufacturer to submit a report at least 90 days prior to making an introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product. Section 905(j)(1)(A)(ii) of the FD&C Act states that if an exemption has been requested and granted, the manufacturer must submit to FDA a report that demonstrates that the tobacco product is modified within the meaning of section 905(j)(3), the modifications are to a product that is commercially marketed and in compliance with the requirements of the FD&C Act, and all the modifications are covered by exemptions granted by the Secretary under section 905(j)(3). FDA estimates the total hours for exemptions from Substantial Equivalence Requirements will be 23,871 hours.

FDA's estimates are based on full analysis of economic impacts and information gathered from other FDA-regulated products. Based on a review of the currently approved information collection, we have made no adjustments to our burden estimate.

Dated: May 30, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–11658 Filed 6–4–19; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; HEAL Initiative: Preventing Opioid Use Disorder in Older Adolescents and Young Adults (ages 16–30) (UG3/UH3 Clinical Trial Required).

*Date:* June 11, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Coordinating Center to Support NIDA Preventing Opioid Use Disorder in Older Adolescents and Young Adults (ages 16–30) Initiative (U24 Clinical Trial Not Allowed).

*Date:* June 12, 2019.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard,

Room 4238, MSC 9550, Bethesda, MD 20892, 301–827–5820, *hiromi.ono@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; R13 Conference Grant Review.

*Date:* June 26, 2019.

*Time:* 6:00 a.m. to 10:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Virtual Reality Tools to Enhance Evidence Based Treatment of Substance Use Disorders.

*Date:* July 10–11, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: America's Startups and Small Businesses Build Technologies to Stop the Opioid Epidemic (R41/R42/R43/R44—Clinical Trial Optional).

*Date:* July 10–11, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 30, 2019.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–11667 Filed 6–4–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

*Date:* June 24, 2019.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Opioids and HIV at the single cell, single RNA level.

*Date:* June 27, 2019.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Health Informatics.

*Date:* July 1, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* AC Hotel by Marriott National Harbor, 156 Waterfront Street, Oxon Hill, MD 20745.

*Contact Person:* Sheba King Dunston, Ph.D., Scientific Review Officer, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, Bethesda, MD 20892, 301–402–4933, *dunstonsk@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Microbiology Research Enhancement Review.

*Date:* July 1, 2019.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crown Plaza River Oaks, 2712 Southwest Freeway, Houston, TX 77098.

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AREA Topics in Infectious Disease.

*Date:* July 1, 2019.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crown Plaza River Oaks, 2712 Southwest Freeway, Houston, TX 77098.

*Contact Person:* Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–11671 Filed 6–4–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the June 27, 2019 meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, which was published in the **Federal Register** on May 20, 2019, 84 FR 22870.

Date, Time and Place remain the same. This notice is amended to update contact information—Dr. Kathy Salaita, Chief, Scientific Review Branch, NIAMS/NIH/DHHS, 6701 Democracy Blvd., Rm. 818, Bethesda, MD 20892, *Kathy.Salaita@nih.gov.* The meeting is closed to the public.

Dated: May 30, 2019.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019–11665 Filed 6–4–19; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0061]**

### Agency Information Collection Activities: Application To Establish a Centralized Examination Station

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than August 5, 2019) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0061 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

*Title:* Application to Establish a Centralized Examination Station.

*OMB Number:* 1651–0061.

*Abstract:* A CES is a facility where imported merchandise is made available to CBP officers for physical examination. If a port director decides that a CES is needed, he or she solicits applications to operate a CES. The information contained in the application is used to determine the suitability of the applicant's facility; the fairness of fee structure; and the knowledge of cargo handling operations and of CBP procedures. The names of all corporate officers and all employees who will come in contact with uncleared cargo are also to be provided so that CBP may perform background investigations. The CES application is provided for by 19 CFR 118.11 and is authorized by 19 U.S.C. 1499, Tariff Act of 1930.

*Current Actions:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 50.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 50.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 100 hours.

Dated: May 31, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11684 Filed 6–4–19; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0076]**

### Agency Information Collection Activities: Customs and Border Protection Recordkeeping Requirements

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted no later than August 5, 2019 to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0076 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

## Overview of This Information Collection

*Title:* CBP Recordkeeping Requirements.

*OMB Number:* 1651–0076.

*Abstract:* The North American Free Trade Agreement Implementation Act, Title VI, known as the Customs Modernization Act (Mod Act) amended title 19 U.S.C. 1508, 1509 and 1510 by revising customs laws related to recordkeeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. Specifically, the Mod Act amended § 1508 by expanding the list of parties subject to CBP recordkeeping requirements; distinguishing between records which pertain to the entry of merchandise and financial records needed to substantiate the correctness of information contained in entry documentation; and identifying a list of records which must be maintained and produced upon request by CBP. The information and records are used by CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods. The CBP recordkeeping requirements are provided for by 19 CFR 163 and instructions are available at: *http://www.cbp.gov/document/publications/recordkeeping.*

*Current Actions:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the recordkeeping requirements.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 5,459.

*Estimated Number of Annual Responses per Recordkeeper:* 1.

*Estimated Number of Total Annual Responses:* 5,459.

*Estimated Annual Time per Recordkeeper:* 1,040 hours.

*Estimated Annual Burden Hours:* 5,677,360.

Dated: May 31, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11686 Filed 6–4–19; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0080]**

### Agency Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than July 5, 2019) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information

collection was previously published in the **Federal Register** (84 FR 5101) on February 20, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Deferral of Duty on Large Yachts Imported for Sale.

*OMB Number:* 1651–0080.

*Action:* CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to the information collected.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses and Individuals.

*Abstract:* This collection of information is required to ensure compliance with 19 U.S.C. 1484b, which provides that an otherwise dutiable large yacht, *i.e.,* one that exceeds 79 feet in length, is used primarily for recreation or pleasure, and had been previously sold by a manufacturer or dealer to a retail customer, may be imported without the payment of duty if the importer of record certifies that the large yacht is imported for sale at a boat show in the United States and posts a bond. The statute, inter alia, provides for the deferral of payment of duty until the yacht is sold but specifies that the duty deferral period may not exceed 6 months. This collection of information is provided for by 19 CFR 4.94a, which requires the submission of information to CBP such as the name and address of the owner of the yacht, the dates of cruising in the waters of the United States, information about the yacht, and the ports of arrival and departure.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 50.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 50.

Dated: May 30, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11682 Filed 6–4–19; 8:45 am]

**BILLING CODE 9111–14–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0081]**

### Agency Information Collection Activities: Delivery Ticket

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted no later than August 5, 2019 to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0081 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Delivery Ticket.

*OMB Number:* 1651–0081.

*Form Number:* CBP Form 6043.

*Abstract:* CBP Form 6043, *Delivery Ticket,* is used to document transfers of imported merchandise between parties. This form collects information such as

the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is filled out by warehouse proprietors, carriers, Foreign Trade Zone operators and others involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=6043&=Apply.*

*Action:* CBP proposes to extend the expiration date of this information collection with a decrease in burden hours due to revised agency estimates, there is no change to the information collected.

*Type of Review:* Extension (with change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 1,156.

*Estimated Number of Annual Responses per Respondent:* 200.

*Estimated Number of Total Annual Responses:* 231,200.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 57,800.

Dated: May 31, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11683 Filed 6–4–19; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0077]**

### Agency Information Collection Activities: Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Traveler Program

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than July 5, 2019) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection 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. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 10520) on March 21, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Customs-Trade Partnership Against Terrorism (C–TPAT) and the Trusted Trader Program.

*OMB Number:* 1651–0077.

*Current Actions:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

*Type of Review:* Extension (with no change).

*Affected Public:* Businesses.

*Abstract:* The C–TPAT Program is designed to safeguard the world's trade industry from terrorists and smugglers by prescreening its participants. The C–TPAT Program applies to United States importers, customs brokers, consolidators, port and terminal operators, carriers, and foreign manufacturers.

Respondents apply to participate in the Trusted Trader Program and C–TPAT using an on-line application at: *https://ctpat.cbp.dhs.gov/trade-web/index.* The C–TPAT Program application requests an applicant's contact and business information, including the number of company employees, the number of years in business, and a list of company officers. This collection of information is authorized by the SAFE Port Act (Pub. L. 109–347).

The Trusted Trader Program involves a unification of supply chain security aspects of the C–TPAT Program and the internal controls of the Importer Self-Assessment (ISA) Program to integrate supply chain security and trade compliance. The Trusted Trader Program strengthens security by leveraging the C–TPAT supply chain requirements and validation, identifying low-risk trade entities for supply chain security and trade compliance, and increasing the overall efficiency of trade by segmenting risk and processing by account. The Trusted Trader Program applies to importer participants who have satisfied C–TPAT supply chain security and trade compliance requirements.

After an importer obtains Trusted Trader Program membership, the importer will be required to submit an Annual Notification Letter to CBP

confirming that they are continuing to meet the requirements of the Trusted Trader Program. This letter should include: Personnel changes that impact the Trusted Trader Program; organizational and procedural changes; a summary of risk assessment and self-testing results; a summary of post-entry amendments and/or disclosures made to CBP; and any importer activity changes within the last 12-month period.

**C–TPAT Program Application**

*Estimated Number of Respondents:* 750.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 20 hours.

*Estimated Total Annual Burden Hours:* 15,000.

**Trusted Trader Program Application**

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 100.

**Trusted Trader Program's Annual Notification Letter**

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 100.

Dated: May 31, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11685 Filed 6–4–19; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0014]**

### Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted no later than August 5, 2019 to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0014 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Declaration for Free Entry of Unaccompanied Articles.

*OMB Number:* 1651–0014.

*Form Number:* Form 3299.

*Abstract:* 19 U.S.C. 1498 provides authority to prescribe rule and regulations for the declaration and entry of certain merchandise. Under this statutory authority, U.S. Customs and Border Protection requires that, when personal and household effects enter the United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and 148.77. CBP Form 3299 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=3299.*

*Current Actions:* This submission is being made to extend the expiration date with no changes to the burden hours or to CBP Form 3299.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses and Individuals.

*Estimated Number of Respondents:* 150,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 150,000.

*Estimated Time per Response:* 45 minutes.

*Estimated Total Annual Burden Hours:* 112,500.

Dated: May 31, 2019.

**Seth D. Renkema,**

*Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.*

[FR Doc. 2019–11687 Filed 6–4–19; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1929]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before September 3, 2019.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1929, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Culpeper County, Virginia and Incorporated Areas Project: 18–03–0004S Preliminary Date: July 23, 2018** | |
| Town of Culpeper | Town Hall, Planning and Community Development, 400 South Main Street, Suite 301, Culpeper, VA 22701. |
| Unincorporated Areas of Culpeper County | Culpeper County Planning and Zoning Department, 302 North Main Street, Culpeper, VA 22701. |

[FR Doc. 2019–11663 Filed 6–4–19; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The date of August 28, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Las Animas County, Colorado and Incorporated Areas<br>Docket No.: FEMA–B–1757** | |
| City of Trinidad | City Government Office, 135 North Animas Street, Trinidad, CO 81082. |
| Town of Aguilar | Town Government Office, 101 West Main Street, Aguilar, CO 81020. |
| Town of Starkville | Mayor's Office, 8531 Pinon Street, Starkville, CO 81082. |
| Unincorporated Areas of Las Animas County | Las Animas County Land Use Office, 200 East 1st Street, Room 102, Trinidad, CO 81082. |
| **Bergen County, New Jersey (All Jurisdictions)<br>Docket Nos.: FEMA B–1504 and B–1744** | |
| Borough of Allendale | Borough Hall, 500 West Crescent Avenue, Allendale, NJ 07401. |
| Borough of Bergenfield | Borough Hall, 198 North Washington Avenue, Bergenfield, NJ 07621. |
| Borough of Bogota | Borough Hall, 375 Larch Avenue, Bogota, NJ 07603. |
| Borough of Carlstadt | Borough Hall, 500 Madison Street, Carlstadt, NJ 07072. |
| Borough of Closter | Borough Hall, 295 Old Closter Dock Road, Closter, NJ 07624. |
| Borough of East Rutherford | Borough Hall, 1 Everett Place, East Rutherford, NJ 07073. |
| Borough of Edgewater | Borough Hall, 55 River Road, Edgewater, NJ 07020. |
| Borough of Elmwood Park | Municipal Building, 182 Market Street, Elmwood Park, NJ 07407. |
| Borough of Emerson | Borough Hall, 146 Linwood Avenue, Emerson, NJ 07630. |
| Borough of Fair Lawn | Borough Hall, 8–01 Fair Lawn Avenue, Fair Lawn, NJ 07410. |
| Borough of Fairview | Borough Hall, 59 Anderson Avenue, Fairview, NJ 07022. |
| Borough of Franklin Lakes | Borough Hall, 480 De Korte Drive, Franklin Lakes, NJ 07417. |
| Borough of Glen Rock | Municipal Building, 1 Harding Plaza, Glen Rock, NJ 07452. |
| Borough of Harrington Park | Borough Hall, 85 Harriot Avenue, Harrington Park, NJ 07640. |
| Borough of Hasbrouck Heights | Municipal Building, 320 Boulevard, Hasbrouck Heights, NJ 07604. |
| Borough of Haworth | Borough Hall, 300 Haworth Avenue, Haworth, NJ 07641. |
| Borough of Hillsdale | Borough Hall, 380 Hillsdale Avenue, Hillsdale, NJ 07642. |
| Borough of Ho-Ho-Kus | Borough Hall, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423. |
| Borough of Leonia | Borough Hall, 312 Broad Avenue, Leonia, NJ 07605. |
| Borough of Little Ferry | Borough Hall, 215–217 Liberty Street, Little Ferry, NJ 07643. |
| Borough of Lodi | Borough Hall, One Memorial Drive, Lodi, NJ 07644. |

| Community | Community map repository address |
|---|---|
| Borough of Maywood | Municipal Building, 15 Park Avenue, Maywood, NJ 07607. |
| Borough of Montvale | Borough Hall, 12 Mercedes Drive, Montvale, NJ 07645. |
| Borough of Moonachie | Municipal Building, 70 Moonachie Road, Moonachie, NJ 07074. |
| Borough of New Milford | Borough Hall, 930 River Road, New Milford, NJ 07646. |
| Borough of North Arlington | Borough Hall, 214 Ridge Road, North Arlington, NJ 07031. |
| Borough of Northvale | Borough Hall, 116 Paris Avenue, Northvale, NJ 07647. |
| Borough of Norwood | Borough Hall, 455 Broadway, Norwood, NJ 07648. |
| Borough of Oakland | Borough Hall, One Municipal Plaza, Oakland, NJ 07436. |
| Borough of Old Tappan | Borough Hall, 227 Old Tappan Road, Old Tappan, NJ 07675. |
| Borough of Oradell | Borough Hall, 355 Kinderkamack Road, Oradell, NJ 07649. |
| Borough of Palisades Park | Borough Hall, 275 Broad Avenue, Palisades Park, NJ 07650. |
| Borough of Paramus | Borough Hall, 1 Jockish Square, Paramus, NJ 07652. |
| Borough of Park Ridge | Borough Hall, 53 Park Avenue, Park Ridge, NJ 07656. |
| Borough of Ramsey | Borough Hall, 33 North Central Avenue, Ramsey, NJ 07446. |
| Borough of Ridgefield | Borough Hall, 604 Broad Avenue, Ridgefield, NJ 07657. |
| Borough of River Edge | Borough Hall, 705 Kinderkamack Road, River Edge, NJ 07661. |
| Borough of Rutherford | Borough Hall, 176 Park Avenue, Rutherford, NJ 07070. |
| Borough of Saddle River | Borough Hall, 100 East Allendale Road, Saddle River, NJ 07458. |
| Borough of Tenafly | Municipal Center, 100 Riveredge Road, Tenafly, NJ 07670. |
| Borough of Upper Saddle River | Borough Hall, 376 West Saddle River Road, Upper Saddle River, NJ 07458. |
| Borough of Waldwick | Borough Hall, 63 Franklin Turnpike, Waldwick, NJ 07463. |
| Borough of Wallington | Municipal Building, 54 Union Boulevard, Wallington, NJ 07057. |
| Borough of Westwood | Borough Hall, 101 Washington Avenue, Westwood, NJ 07675. |
| Borough of Woodcliff Lake | Municipal Building, 188 Pascack Road, Woodcliff Lake, NJ 07677. |
| Borough of Wood-Ridge | Municipal Building, 85 Humboldt Street, Wood-Ridge, NJ 07075. |
| City of Englewood | City Hall, 2–10 North Van Brunt Street, Englewood, NJ 07631. |
| City of Garfield | City Hall, 111 Outwater Lane, Garfield, NJ 07026. |
| City of Hackensack | City Hall, 65 Central Avenue, Hackensack, NJ 07601. |
| New Jersey Sports and Exposition Authority | Administrative Offices, 1 DeKorte Park Plaza, Lyndhurst, NJ 07071. |
| Township of Lyndhurst | Town Hall, 367 Valley Brook Avenue, Lyndhurst, NJ 07071. |
| Township of Mahwah | Municipal Building, 475 Corporate Drive, Mahwah, NJ 07430. |
| Township of River Vale | Township Office, 406 Rivervale Road, River Vale, NJ 07675. |
| Township of Rochelle Park | Town Hall, 151 West Passaic Street, Rochelle Park, NJ 07662. |
| Township of Saddle Brook | Town Hall, 93 Market Street, Saddle Brook, NJ 07663. |
| Township of South Hackensack | Town Hall, 227 Phillips Avenue, South Hackensack, NJ 07606. |
| Township of Teaneck | Municipal Building, 818 Teaneck Road, Teaneck, NJ 07666. |
| Township of Wyckoff | Memorial Township Hall, 340 Franklin Avenue, Scott Plaza, Wyckoff, NJ 07481. |
| Village of Ridgefield Park | Village Hall, 232–234 Main Street, Ridgefield Park, NJ 07660. |
| Village of Ridgewood | Village Hall, 131 North Maple Avenue, Ridgewood, NJ 07450. |
| **Burlington County, New Jersey (All Jurisdictions)**<br>**Docket No.: FEMA–B–1820** | |
| Township of Mount Laurel | Municipal Building, 100 Mount Laurel Road, Mount Laurel, NJ 08054. |
| **Ashtabula County, Ohio and Incorporated Areas**<br>**Docket No.: FEMA–B–1806** | |
| City of Ashtabula | City Hall, 4717 Main Avenue, Ashtabula, OH 44004. |
| City of Conneaut | City Hall, 294 Main Street, Conneaut, OH 44030. |
| Unincorporated Areas of Ashtabula County | Building Department, 25 West Jefferson Street, Jefferson, OH 44047. |
| Village of Geneva-on-the-Lake | Village Hall, 4929 South Warner Drive, Geneva-on-the-Lake, OH 44041. |
| Village of North Kingsville | Municipal Building, 3541 East Center Street, North Kingsville, OH 44068. |
| **Sandusky County, Ohio and Incorporated Areas**<br>**Docket No.: FEMA–B–1806** | |
| Unincorporated Areas of Sandusky County | Regional Planning Commission, 2511 Countryside Drive, Suite C, Fremont, OH 43420. |

[FR Doc. 2019–11672 Filed 6–4–19; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The date of August 15, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Boulder County, Colorado and Incorporated Areas<br>Docket No.: FEMA–B–1753** | |
| City of Lafayette | City Hall, 1290 South Public Road, Lafayette, CO 80026. |
| City of Louisville | City Hall, 749 Main Street, Louisville, CO 80027. |
| Town of Erie | Town Hall, 645 Holbrook Street, Erie, CO 80516. |
| Town of Superior | Town Hall, 124 East Coal Creek Drive, Superior, CO 80027. |
| Unincorporated Areas of Boulder County | Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304. |
| **City and County of Broomfield, Colorado<br>Docket No.: FEMA–B–1753** | |
| City and County of Broomfield | City Hall, Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020. |
| **Pitkin County, Colorado and Incorporated Areas<br>Docket No.: FEMA–B–1547** | |
| City of Aspen | Engineering Department, 201 North Mill Street, Suite 203, Aspen, CO 81611. |
| Town of Snowmass Village | Town Hall, 130 Kearns Road, Snowmass Village, CO 81615. |
| Unincorporated Areas of Pitkin County | Pitkin County Administration Building, Planning and Zoning Department, 530 East Main Street, Suite 205, Aspen, CO 81611. |
| **Pueblo County, Colorado and Incorporated Areas<br>Docket No.: FEMA–B–1652** | |
| City of Pueblo | Public Works, 211 East D Street, Pueblo, CO 81003. |
| Town of Boone | Town Hall, 421 East 1st Street, Boone, CO 81025. |
| Town of Rye | Water Plant, 8171 Park Road, Rye, CO 81069. |
| Unincorporated Areas of Pueblo County | Pueblo County Planning and Development Department, 229 West 12th Street, Pueblo, CO 81003. |

| Community | Community map repository address |
|---|---|
| **Burke County, Georgia and Incorporated Areas Docket No.: FEMA–B–1823** | |
| Unincorporated Areas of Burke County | Burke County Courthouse, 602 North Liberty Street, Waynesboro, GA 30830. |
| **Carroll County, Georgia and Incorporated Areas Docket No.: FEMA–B–1708** | |
| City of Villa Rica | City Hall, 571 West Bankhead Highway, Villa Rica, GA 30180. |
| **DeKalb County, Georgia and Incorporated Areas Docket No.: FEMA–B–1823** | |
| City of Atlanta | Office of Zoning and Development, 55 Trinity Avenue Southwest, Suite 3350, Atlanta, GA 30303. |
| City of Brookhaven | City Hall, 4362 Peachtree Road, Brookhaven, GA 30319. |
| City of Chamblee | City Hall, 5468 Peachtree Road, Chamblee, GA 30341. |
| City of Clarkston | City Hall—Annex, 1055 Rowland Street, Clarkston, GA 30021. |
| City of Decatur | Leveritt Public Works Building, 2635 Talley Street, Decatur, GA 30030. |
| City of Doraville | City Hall, 3725 Park Avenue, Doraville, GA 30340. |
| City of Dunwoody | City Hall, 4800 Ashford Dunwoody Road, Dunwoody, GA 30338. |
| City of Tucker | City Hall, 4119 Adrian Street, Tucker, GA 30084. |
| Unincorporated Areas of DeKalb County | DeKalb County Roads and Drainage Department, 727 Camp Road, Decatur, GA 30032. |
| **Lenawee County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1806** | |
| Charter Township of Adrian | Township Hall, 2907 Tipton Highway, Adrian, MI 49221. |
| Charter Township of Madison | Township Hall, 4008 South Adrian Highway, Adrian, MI 49221. |
| Charter Township of Raisin | Township Offices, 5525 Occidental Highway, Tecumseh, MI 49286. |
| City of Adrian | City Hall, 135 East Maumee Street, Adrian, MI 49221. |
| City of Hudson | City Hall, 121 North Church Street, Hudson, MI 49247. |
| City of Tecumseh | City Hall, 309 East Chicago Boulevard, Tecumseh, MI 49286. |
| Township of Blissfield | Township Offices, 120 South Lane Street, Blissfield, MI 49228. |
| Township of Cambridge | Township Hall, 9990 West M50, Onsted, MI 49265. |
| Township of Clinton | Township Hall, 172 West Michigan Avenue, Clinton, MI 49236. |
| Township of Deerfield | Township Hall, 468 Carey Street, Deerfield, MI 49238. |
| Township of Franklin | Township Hall, 3922 Monroe Road, Tipton, MI 49287. |
| Township of Hudson | Township Hall, 14510 Carleton Road, Hudson, MI 49247. |
| Township of Ogden | Township Hall, 10128 Pence Highway, Blissfield, MI 49228. |
| Township of Palmyra | Township Hall, 4276 Main Street, Palmyra, MI 49268. |
| Township of Riga | Township Hall, 7817 Riga Highway, Riga, MI 49276. |
| Township of Rome | Township Office, 9344 Forrister Road, Adrian, MI 49221. |
| Township of Tecumseh | Township Hall, 7750 Hendershot Highway, Tecumseh, MI 49286. |
| Township of Woodstock | Township Hall, 6486 Devils Lake Highway, Addison, MI 49220. |
| Village of Blissfield | Village Hall, 130 South Lane Street, Blissfield, MI 49228. |
| Village of Cement City | Village Office, 135 Main Street, Cement City, MI 49233. |
| Village of Clinton | Village Office, 119 East Michigan Avenue, Clinton, MI 49236. |
| Village of Deerfield | Municipal Building, 101 West River Street, Deerfield, MI 49238. |
| **Fillmore County, Minnesota and Incorporated Areas Docket No.: FEMA–B–1667** | |
| City of Chatfield | City Hall, 21 Second Street Southeast, Chatfield, MN 55923. |
| City of Lanesboro | City Hall, 202 Parkway Avenue South, Lanesboro, MN 55949. |
| City of Mabel | City Hall, 207 North Main Street, Mabel, MN 55954. |
| City of Ostrander | City Hall, 414 Main Street, Ostrander, MN 55961. |
| City of Peterson | City Hall, 118 Fillmore Street, Peterson, MN 55962. |
| City of Preston | City Hall, 210 Fillmore Street West, Preston, MN 55965. |
| City of Rushford | City Hall, 101 North Mill Street, Rushford, MN 55971. |
| City of Rushford Village | City Hall, 43038 State Highway 30 West, Rushford Village, MN 55971. |
| City of Spring Valley | City Hall, 201 South Broadway, Spring Valley, MN 55975. |
| City of Whalan | City Hall, 905 Bench Street, Whalan, Minnesota 55949. |
| Unincorporated Areas of Fillmore County | Fillmore County Courthouse, 101 Fillmore Street, Preston, MN 55965. |
| **Richland County, Montana and Incorporated Areas Docket No.: FEMA–B–1753** | |
| Unincorporated Areas of Richland County | Richland County Courthouse, 201 West Main Street, Sidney, MT 59270. |

| Community | Community map repository address |
|---|---|
| **Cuyahoga County, Ohio and Incorporated Areas Docket No.: FEMA–B–1804** | |
| City of Bay Village | Engineering Department, 350 Dover Center Road, Bay Village, OH 44140. |
| City of Cleveland | City Hall, 601 Lakeside Avenue, Cleveland, OH 44114. |
| City of Euclid | City Hall, 585 East 222nd Street, Euclid, OH 44123. |
| City of Lakewood | City Hall, 12650 Detroit Avenue, Lakewood, OH 44107. |
| City of Rocky River | City Hall, 21012 Hilliard Boulevard, Rocky River, OH 44116. |
| Village of Bratenahl | Village Hall, 411 Bratenahl Road, Bratenahl, OH 44108. |
| **Richland County, Ohio and Incorporated Areas Docket No.: FEMA–B–1703** | |
| City of Shelby | City Hall, 43 West Main Street, Shelby, OH 44875. |
| Unincorporated Areas of Richland County | Richland County Engineer's Office, 77 North Mulberry Street, Mansfield, OH 44902. |
| **Galveston County, Texas and Incorporated Areas Docket No.: FEMA–B–1315 and FEMA–B–1827** | |
| City of Bayou Vista | City Hall, 2929 State Highway 6, Bayou Vista, TX 77563. |
| City of Clear Lake Shores | City Hall, 1006 South Shore Drive, Clear Lake Shores, TX 77565. |
| City of Dickinson | City Hall, 4403 Highway 3, Dickinson, TX 77539. |
| City of Friendswood | City Hall, 910 South Friendswood Drive, Friendswood, TX 77546. |
| City of Galveston | City Hall, 823 Rosenberg Street, Room 401, Galveston, TX 77553. |
| City of Hitchcock | City Hall, 7423 Highway 6, Hitchcock, TX 77563. |
| City of Jamaica Beach | Municipal Court, 16628 San Luis Pass Road, Jamaica Beach, TX 77554. |
| City of Kemah | City Hall, 1401 State Highway 146, Kemah, TX 77565. |
| City of La Marque | City Hall, 1111 Bayou Road, La Marque, TX 77568. |
| City of League City | Building Department, 500 West Walker Street, League City, TX 77573. |
| City of Santa Fe | City Hall, 12002 State Highway 6, Santa Fe, TX 77510. |
| City of Texas City | Building Inspections Department, 928 5th Avenue North, Texas City, TX 77592. |
| Unincorporated Areas of Galveston County | Galveston County Courthouse, Engineering Department, 722 Moody Avenue, Galveston, TX 77550. |
| Village of Tiki Island | City Hall, 802 Tiki Drive, Tiki Island, TX 77554. |

[FR Doc. 2019–11669 Filed 6–4–19; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1912]**

### Proposed Flood Hazard Determinations for Frederick County, Maryland and Incorporated Areas

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Frederick County, Maryland and Incorporated Areas.

**DATES:** This withdrawal is effective June 5, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA–B–1912, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** On March 18, 2019, FEMA published a proposed notice at 84 FR 9806, proposing flood hazard determinations for Frederick County, Maryland and Incorporated Areas. FEMA is withdrawing the proposed notice.

**Authority:** 42 U.S.C. 4104; 44 CFR 67.4.

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2019–11673 Filed 6–4–19; 8:45 am]
BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0116]**

### Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The notice is inviting additional public comments for 30-days. The purpose of this notice is to inform the public about the policy changes being effectuated by the revision of the USCIS Request for Fee Waiver, expound on the reasons for the change, and request public comments on the additional points raised in this notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 5, 2019.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0116 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

## Background

USCIS is primarily funded by application and petition fees. Under INA 286(m), 8 U.S.C. 1356(m), DHS has the authority to establish the fees it charges for immigration and naturalization services to recover the full costs of such services, including those provided without charge, and to recover costs associated with the administration of the fees collected. Therefore, the fees are set at a level that is intended to recover the full cost of USCIS operations.

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR 103.7(c). To request a fee waiver, the individual must submit a written waiver request for permission to have his or her benefit request processed without payment. Under the current regulation, the waiver request must state the person's belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay and include evidence to support the reasons indicated. *See* 8 CFR 103.7(c)(2). The statute authorizing USCIS to establish fees does not specifically mention fee waivers and fee exemptions for any type of applicant or group, or any criteria for fee waivers. The statute does state that fees are to be set at a level that will recover the full costs of adjudication and naturalization services provided ''including the costs of similar services provided without charge to asylum applicants or other immigrants.'' INA section 286(m), 8 U.S.C. 1356(m). However, DHS must permit certain applicants to apply for fee waivers. INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

In 2011, USCIS issued policy guidance to streamline fee waiver adjudications. *See* Policy Memorandum, PM–602–0011.1, *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule;* Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11–26 (Mar. 13, 2011) (''Fee Waiver Policy''). The Fee Waiver Policy interpreted 8 CFR 103.7(c) to provide acceptable measures of income, establish the procedures individuals must follow, and outline the documentation that may demonstrate they are unable to pay a fee. In June 2011, USCIS issued Form I–912, Request for Fee Waiver, as a standardized form with instructions to request a fee waiver in accordance with the Fee Waiver Policy. Prior to the 2011 Fee Waiver Policy, USCIS engaged in a holistic analysis of the individual's finances to determine inability to pay, which burdened USCIS officers with a preliminary financial analysis, that preceded their primary role of determining if the applicant met the requirements for the benefit requested. The 2011 Fee Waiver Policy established a streamlined process where if the individual provided proof of a means-tested benefit, the fee waiver will normally be approved for forms listed in 8 CFR 103.7(c)(3) for applicants who at time of filing the fee waiver request with the benefit application:

- Were receiving a means-tested benefit;
- Had a household income at or below 150 percent of the Federal Poverty Guidelines (FPG); or
- Were experiencing extreme financial hardship such as unexpected medical bills or emergencies.

## Proposed Changes

USCIS is removing the means-tested benefit as a criterion in its fee waiver request determinations, requiring the submission of Form I–912 to request a fee waiver, and clarifying what the evidentiary that will be considered for a fee waiver. The proposed guidance would provide that a person may be eligible to receive a fee waiver if he or she:

- Has a household income at or below 150 percent of the FPG; or
- Is experiencing extreme financial hardship such as unexpected medical bills or emergencies.

USCIS is proposing to rescind the March 13, 2011 policy and issue new guidance clarifying what documentation may be submitted to demonstrate an individual's inability to pay a fee when requesting a fee waiver. The applications and petitions that are eligible for a fee waiver are provided in 8 CFR 103.7(c)(3) and will not be changed by this form and policy change.

USCIS notes that the proposed policy also complies with section 1238 of the Federal Aviation Reauthorization Act of 2018. Public Law 115–254 (Oct. 5, 2018). That law provides that the President, in consultation with the Governor of a State, may waive certain fees for an individual or household who lives in a federally declared disaster area, including the following USCIS fees: Form I–90; Form I–193; Form I–765; Form N–300; Form N–565; and the biometric services fee. DHS plans to carry out this permissive authority through the USCIS Director's exercise of his or her discretion to provide a specific class of fee waivers for emergency and disaster relief. 8 CFR 103.7(d).

## Reasons for the Changes

USCIS has determined that without changes to fee waiver policy it will continue to forgo increasing amounts of revenue as more fees are waived. As a result, USCIS expects that DHS will be required to increase the fees that it charges for benefit requests for which fees are not waived. In the FY 2016/

2017 fee rule, DHS noted that the estimated annual forgone revenue from fee waivers and exemptions has increased markedly, from $191 million in the FY 2010/2011 fee review to $613 million in the FY 2016/2017 fee review. *See* 81 FR 26922 and 73307. In the FY 2016/2017 proposed rule, DHS provided notice that in the future it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). *See* 81 FR 26922.

In addition to curtailing the rising costs of fee waivers, this proposed policy change is intended to introduce more consistent criteria for approving all fee waivers. USCIS has found that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state, but denied for a person with that same income who lives in another state. Therefore, USCIS has determined that fee waivers should not be based on the receipt of a means tested benefit, and the revised form will not permit a fee waiver based on receipt of a means-tested benefit. It will retain the poverty-guideline threshold and financial hardship criteria.

**Administrative Procedure Act (APA) and Paperwork Reduction Act (PRA)**

USCIS has published two **Federal Register** notices requesting public comment on these proposed changes as required by regulations at 5 CFR 1320.8(d)(1) (83 FR 49120) and 5 CFR 1320.10(a) (84 FR 13687). USCIS is in the process of responding to the comments received, but has decided to provide this additional notice and request for comments to clarify the nature of the proposed policy changes.

The current USCIS policy and the Form I–912 provide the procedures for requesting a waiver of USCIS fees based on 8 CFR 103.7(c), which provides that the party requesting the benefit is unable to pay the prescribed fee, and a fee waiver is consistent with the status or benefit sought. The APA excepts rules of agency organization, procedure or practice from notice and comment requirements. 5 U.S.C. 553(b)(A). USCIS issued its 2011 Fee Waiver Policy and Form I–912 to explain and provide instructions to adjudicators but did not create legally binding rights, obligations, or effect a change in the regulations. In addition, the USCIS form instructions for Form I–912 established procedural requirements for requesting a fee waiver. The form instructions established application procedures but did not change the substantive standards by which USCIS evaluated applications for immigration benefit requests, just the procedural steps for such requests. An agency is not required to use the APA's notice-and-comment procedures to issue an interpretive or procedural rule that amends or repeals an interpretive [1] or procedural rule.[2]

USCIS has reviewed this policy change and determined that it will not abrogate or adversely affect any substantive rights of the affected parties. The 2011 Fee Waiver Policy provided guidelines for adjudication of requests and provided that we would accept a means tested benefit as evidence of inability to pay as required by 8 CFR 103.7(c)(2). With respect to the proposed policy change, USCIS acknowledges that a person who is receiving a means tested benefit in a state where the income level for granting the receipt of a means tested benefit is above 150 percent of the FPG (the new maximum threshold for a fee waiver), may no longer be able to have their USCIS fees waived simply by using receipt of that benefit as evidence. However, USCIS does not think that by having operated under that policy results in individuals who happen to receive a means tested benefit from a government agency inuring to a *right* to receive adjudication of their immigration benefit request for free.

Additionally, USCIS acknowledges that, while an agency can change its interpretation of a regulation at different times in its history, the interpretative changes can create no unfair surprise.[3] As stated above, USCIS acknowledges that as a result of this change there are some applicants who would be able to receive free adjudication now who will not be able to after this policy change. USCIS has, however, analyzed the potential for and taken into account serious reliance interests that may be engendered by the 2011 policies. USCIS has determined that potential applicants cannot reasonably be determined to have taken an action in detrimental reliance on USCIS continuing its 2011 policy for providing free services. Regardless of USCIS's past use of receipt of means tested benefits as a means for determining that an applicant for immigration benefits is unable to pay the fee for his or her immigration benefit request, USCIS has determined that an applicant is unlikely to have incurred costs or been harmed based on relying on USCIS continuing that policy. Each person's decision to apply for, and eligibility to receive, a means tested benefit would be based on the need for that benefit and not because the person can use receipt of the benefit to avoid paying a USCIS immigration benefit request fee. To the extent that a person is in the process of completing and filing a request, with this notice USCIS will have provided three public notices of the impending policy and procedure change. In addition, to eliminate any impact on an applicant who is currently working on, researching, and gathering necessary evidence for an immigration benefit and planning to request a fee waiver based on receipt of a means tested benefit, USCIS will provide sufficient advance notice and transition period before the new version of Form I–912 will be a requirement for requesting a fee waiver, to permit applications that are in process to be submitted under the previous policy. To the extent that applicants who are not yet working on, researching, and gathering necessary evidence for an application may no longer receive a fee waiver after this change, USCIS has determined that the need to reduce annual forgone revenue from fee waivers and approve fee waivers using consistent income levels is still justified and necessary regardless of those affected parties being required to pay the prescribed fees. USCIS welcomes public comments on all of the effects of this change in policy.

**Comments**

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2010–0008 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

[1] *Perez* v. *Mortgage Bankers Ass'n,* 135 S.Ct. 1199 (2015).

[2] *James* v. *Hurson Associates, Inc.* v. *Glickman,* 229 F.3d 277 (D.C. Cir. 2000).

[3] *Long Island Care at Home Ltd.* v. *Coke,* 551 U.S. 158, 171 (2007); *Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142 (2012).

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates that he or she is unable to pay the fee. Form I–912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I–912 also streamlines and expedites USCIS's review, approval, or denial of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all factors, circumstances, and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–912 is 350,000 and the estimated hour burden per response is 1.17 hours; for the information collection DACA Exemptions the estimated total number of respondents is 108 and the estimated hour burden per response is 1.17 hours; for the information collection 8 CFR 103.7(d) Director's exception request the estimated total number of respondents is 20 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 409,650 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,312,980.

**L. Francis Cissna,**

*Director, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2019–11744 Filed 6–4–19; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0047]**

### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Employment Eligibility Verification

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 5, 2019.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0047 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

**SUPPLEMENTARY INFORMATION:**

**Comments**

The information collection notice was previously published in the **Federal Register** on March 1, 2019, at 84 FR 7101, allowing for a 60-day public comment period. USCIS did receive 21 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0068 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS*

*sponsoring the collection:* Form I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Employers, employees, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9 is 55,400,000 for employers and recruiters and referrers with estimated hour burden per response is 0.33 hour; 55,400,000 for individuals/households with estimated hour burden per response is 0.17 hour; and 20,000,000 for record keepers with an estimated hour burden response of 0.08 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 29,300,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: May 30, 2019.

**Samantha L. Deshommes,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2019–11642 Filed 6–4–19; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6161–N–01]**

## Proposed Changes to the Methodology Used for Estimating Fair Market Rents

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice of proposed changes for estimation of Fair Market Rents (FMRs).

**SUMMARY:** Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy Program, and to serve as rent ceilings for rental units in both the HOME Investment Partnerships Program and the Emergency Solutions Grants Program. HUD also uses FMRs in the calculation of maximum award amounts for Continuum of Care grantees and in the calculation of flat rents for Public Housing units. In furtherance of that effort, HUD proposes two changes in how FMRs are estimated in this notice and seeks public comment on the proposed changes.

**DATES:** *Comment Due Date: July 5, 2019.*

**ADDRESSES:** HUD invites interested persons to submit comments regarding the proposed changes to the calculation of the FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Questions on this notice may be addressed to Adam Bibler, Chalita Brandly, or Peter Kahn of the Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410; telephone number 202–402–2409 (this is not a toll-free number), or they may be reached at *emad-hq@hud.gov.* Persons with hearing or speech impairments may access HUD numbers through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free). For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 (toll-free) or access the information on the HUD USER website *https://www.huduser.gov/portal/datasets/fmr.html.*

*Electronic Data Availability.* This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically from *https://www.federalregister.gov/,*

the U.S. Government Printing Office website.

Complete documentation of the impact of these methodology changes and calculation of hypothetical FY 2019 FMRs with these changes are available at *https://www.huduser.gov/portal/datasets/fmr.html.* Small Area FMRs for all metropolitan FMR areas incorporating these material changes in methodology have also been calculated and are also available at: *https://www.huduser.gov/portal/datasets/fmr.html.*[1]

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 8 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by Fair Market Rents (FMRs) established by HUD for different geographic areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utility costs) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities and is set at the 40th percentile of the distribution of gross rents for recent movers. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rents paid by recent movers into standard quality units in each FMR area.

In recent years, the most prevalent comments concerning FMRs are that FMRs need to incorporate more local and more timely data. HUD has enumerated potential solutions to these concerns in a recent report to Congress entitled ''Proposals to Update the Fair Market Rent Formula''.[2] The proposals outlined in this notice address the concern of using more local data; however, HUD believes that the use of local trend factors will also address some of the concerns regarding the timeliness of the data used to calculate FMRs.

## II. Procedures for Developing FMRs

Section 8(c)(1) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c)(1)(B) as amended by the Housing Opportunities Through Modernization Act of 2016 (HOTMA) (Pub. L. 114–201, approved July 29, 2016), requires that HUD publish for comment in the **Federal Register** a notice of proposed material changes in the methodology for estimating FMRs and a notice containing HUD's final decisions regarding such proposed substantial methodological changes and responses to public comments.

The calculation of FMRs may be reduced to three parts: An estimate of gross rents paid by recent movers from the American Community Survey (ACS), an inflation adjustment measured using components of the Consumer Price Index, and a trend factor. In the following section, HUD describes proposed changes to the trend factor calculation, and a change in the way Small Area FMRs are calculated for ZIP Codes with insufficient data.

## III. FMR Methodology Changes

### *1. Trend Factor Changes*

Following current methodology, calculation of FMRs for FY 2020 requires HUD to update the ACS-based gross rent ''as of'' 2017 rent through the end of 2018 using the annual change in Consumer Price Index (CPI) components from 2017 to 2018. Following the application of the appropriate CPI update factor, HUD calculates a trend factor, incorporating economic assumptions used in the formulation of the President's Budget, which brings the estimate forward seven quarters from CY 2018 to FY 2020 using a forecast of the Gross Rent Index. The Gross Rent Index forecast is made up of two independently forecasted components of the Consumer Price Index: Housing, Shelter, Rent of Primary Residence; and Housing, Fuels and Utilities.[3] The forecasts of these two series are combined using the long-term average expenditure combination factors of approximately 80 percent and 20 percent, respectively.

Commenters on prior year's FMRs have remarked that FMRs are not timely enough or based enough on local information and that this may cause operational difficulties in program operations for the HCV program. In a 2017 Senate Report,[4] the Committee on Appropriations called for HUD to improve its FMR estimates to better reflect the rent inflation that occurs between the time that American Community Survey data is collected and the fiscal year for which the FMRs are produced. The report further recommended that HUD explore means of accelerating its research on improving its FMR estimates.

As a result of these FMR accuracy concerns, HUD tasked a multi-disciplinary research team to explore ways to refine its current trend factor methodology to address these issues. The final report of this research is available *https://www.huduser.gov/portal/sites/default/files/pdf/deriving-local-trends-factors.pdf.* Within the report, the research team documents that using local CPI data instead of national CPI data to derive local trend factors, using similar methods to what is currently used to derive the national trend factor, can provide better estimates of the expected change in gross rents for local areas where data is available.

Currently, HUD uses a national Gross Rent Index forecast to trend rents to the current fiscal year. HUD's national gross rent index forecast model is a composite of forecasts for national rent of primary residence and national fuels and utilities. The national rent of primary residence relies on forecasts of residential fixed investment from the Bureau of Economic Analysis National Income and Product Accounts. These forecasts come from the economic assumptions that correspond with the President's budget submissions. The national fuels and utilities forecast are based on forecasts of the price per barrel of West Texas Intermediate Crude Oil, the price per short ton of bituminous coal, and the seasonally adjusted Consumer Price Index, All Urban Consumers (CPI–U). The CPI program currently calculates Rent of Primary Residence and Fuels and Utilities for 22 metropolitan areas and for four regions at three different size classes (while data for 10 U.S. divisions and the Riverside-San Bernardino-Ontario, CA metropolitan area are available, they do not currently contain enough data observations to construct reliable forecast estimates). Approximately 42 percent of Housing Choice Voucher families live in an area covered by one of the 22 CPI metropolitan areas. FMR areas without a corresponding CPI metropolitan area will use a regionally based local trend factor.

The multi-disciplinary team HUD tasked examined multiple models and model structures for forecasting shelter rent and utility components of gross rent at the local level. The performance

[1] HUD will provide a set of FY 2019 FMRs for metropolitan areas and non-metropolitan counties with the trend factor changes. For Small Area FMRs, HUD will provide those ZIP Codes that change due to the method changes. However, in order for the reader to track the impact of these changes HUD will not provide datasets with both changes included. The FMRs with all the proposed trend changes will be referred to as FY 2019 hypothetical FMRs and the Small Area FMRs with the proposed changes will be referred to as FY 2019 hypothetical Small Area FMRs.

[2] This report is available at: *https://www.huduser.gov/portal/publications/Proposals-To-Update-the-Fair-Market-Rent-Formula.html.*

[3] Within the CPI, the Housing, Shelter, Rent of Primary Residence has a series ID of SEHA, and the Housing, Fuels and Utilities has a series ID of SAH2.

[4] Senate Report 115–138, page 132: *https://www.congress.gov/115/crpt/srpt138/CRPT-115srpt138.pdf.*

of local forecast models was tested by comparing actual data to an in-sample forecast (or validation period). Models were estimated using approximately 20 years of quarterly observations up to 2016 (Q1) and forecasted out through 2018 (Q1). These comparisons revealed how close rent and utility predictions of the validation period were as measured by the Root Mean Square Error Statistic (RMSE). Models yielding the lowest RMSE were determined to provide the most accurate estimates.

Based on these results, the team recommended that forecast of local vs. national rent of primary residence data from BLS be informed by the forecast of national residential fixed investment from the Bureau of Economic Analysis National Income and Product Accounts, as in the calculation of the national Gross Rent Index. This method is referred to as a ''National Input Model'' (NIM) approach for rent. In contrast, the team's research did not find that using a utility NIM model was the best approach for forecasting local fuels and utility data from BLS. Instead, a ''Pure Time Series'' (PTS) approach produced the best model results. In a PTS approach, the local forecasts are based upon previous values of the variable of interest; in this case prior values of the local fuel and utilities index. Additionally, the team also analyzed a Local Input Model (LIM) approach, where forecasts are developed based off of local exogenous variables such as local building permit data and employment data for rent, and electricity prices for utilities. While the LIM specification produced a lower RMSE in some areas, the research team did not recommend the LIM approach for use in the trend factor as a one-size model for calculating rent or utilities. The above recommendations were based on the study team's finding that the NIM model had a lower RMSE in 10 of the 22 geographic areas for rent, while the PTS model had a lower RMSE in 9 of the 22 geographic areas for utilities.

As a result of the recommendations provided by the research team, HUD is proposing the following to address concerns of FMR accuracy. Overall, HUD proposes using metropolitan and regional Gross Rent Index forecasts to calculate and apply more locally-based trend factors to address concerns of FMR accuracy. While the research provides recommendations to use the NIM forecast for the calculation of the rent of primary residence, and the PTS forecast for the calculation of fuels and utilities, the research shows that one model does not fit the rent and utility data better in all geographic areas. HUD proposes to build on the research team's approach for calculating local trend factors for each CPI area by selecting model forms unique to each area that minimize the RMSE for each rent and utility forecast for each CPI area as opposed to one cross-cutting model form calibrated with the data for each CPI area. This will ensure the best performing models and optimal functional forms are used. As a result, there is a possibility that a forecast model for a CPI area may change over time as additional data become available each year and forecast models are re-estimated. For instances when HUD changes the functional form of the model (NIM, PTS, LIM) for a geographic area that is different from the previous year, HUD will ensure the change is not due to overfitting the model or outliers in the data.

To ensure transparency in this process, HUD will include the model specification used to calculate local trend factors for each area in the on-line Fair Market Rent Documentation System.

*2. Using Neighboring ZIP Codes in Place of County-Based Small Area FMRs*

In calculating Small Area Fair Market Rents (SAFMRs), HUD attempts to use ZIP Code level estimates where possible. In cases where ZIP Code level estimates are not available or are not sufficiently reliable, HUD's current practice is to assign a SAFMR based on the estimate of gross rent for the county of the ZIP Code. However, because metropolitan counties are often much larger than ZIP Codes,[5] this approach has the potential to produce discontinuous SAFMR values where the county based SAFMR is not an accurate proxy for neighborhood-level rents. Moreover, in many cases, HUD-defined metropolitan areas consist of only a single county. This means that a ZIP Code without useable local data will use a SAFMR that is exactly equal to the metropolitan FMR, running counter to the purpose of Small Area FMRs, which is to differentiate rents within a metropolitan area.

To address this, HUD is proposing an additional step. If a ZIP Code Tabulation Area (ZCTA) does not have reliable rent data, HUD will then check to see if the ZCTA is bordered by ZCTAs that themselves have reliable rent data. If at least half of a ZCTA's ''neighbors''[6] have such data, the weighted average of those estimates will be used as the basis for the SAFMR rather than a county proxy, where the weight is length of the shared boundary between the ZCTA and its neighbor. To test the effects of this methodology change, HUD has recalculated FY19 SAFMRs. Adopting this methodology affects the Small Area FMR for 2,677 ZIP Codes, about 11 percent of all published ZIP Codes. Of the 1.87 million voucher holders in metropolitan areas, 4,100, or 0.2 percent are in ZIP Codes affected by this change. The average change relative to the prior methodology is a $49, or 4.1 percent, increase in the two-bedroom Small Area FMR. Of these ZIP Codes, 1,714 experience an increase in the two-bedroom FMR and 963 show a decrease relative to what the SAFMR would be without the use of neighboring ZIP Code rent data.

As an illustrative example, a map depicting a portion of the Pittsburgh, PA metropolitan area prior to the calculation of neighboring ZCTA averages is available at the link specified in the footnotes.[7] ZCTAs 15086 and 15015 show sharp divergences in rent from their surrounding ZCTAs. Calculating the SAFMR based on the average of the neighboring ZCTAs raises the SAFMR from the county-based value of $950 to $1,340 for both 15086 and 15015. In 2016, there were 105 rental housing units in these ZCTAs. Under this approach, the small ZCTA of 15075 would have its SAFMR lowered from the county-based value of $950 to $890, which is the SAFMR of ZCTA 15024, which surrounds 15075.

To assist in evaluating this proposed change, HUD is publishing a file with actual FY 2019 SAFMRs and hypothetical FY 2019 SAFMRs for ZIP Codes affected by this methodology at *https://www.huduser.gov/portal/datasets/fmr/fmr2020/FY19Hypo-SAFMRs-Zipcodes-Material-Change-Notice.xlsx*. Note that the hypothetical SAFMRs do not include the proposed revisions to the trend factor discussed previously in this notice.

[5] The median metropolitan county population in 2016 was 89,075 while the median ZCTA population was 7,130. Additionally, the variation in county population is more pronounced as ZIP Codes are more likely to be similarly sized to facilitate mail delivery. For example, there are 43 metropolitan counties that have a population that exceeds 1,000,000.

[6] The spatial relationships are determined from the Census Bureau's ZCTA boundary file. Because HUD publishes SAFMRs for ZIP Codes that do not appear as ZCTAs, many SAFMRs will continue to use a county-based proxy rent estimate because their spatial relationship to neighboring ZIP Codes cannot be determined.

[7] *https://www.huduser.gov/portal/datasets/fmr.html#2020_documents.*

## IV. Request for Public Comments on Changes

HUD continually strives to calculate FMRs that can serve as an effective program parameter while meeting the statutory requirement to use ''the most recent available data.''

These methodology changes are not monodirectional; for example, the use of local forecast trend factors will cause FMRs to be higher in some areas and lower in others compared to using a national forecast trend factor. HUD is particularly interested in receiving comments on its intended approach for evaluating the accuracy of local trend factors using the RMSE and is interested in potential alternative methods for assessing the best local forecast model to select.

Hypothetical FY 2019 FMRs and Small Area FMRs, using these new methodology changes, are published at *https://www.huduser.gov/portal/datasets/fmr.html#2020_documents*.

## V. Environmental Impact

This notice proposes changes in the way FMRs are calculated and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: May 29, 2019.

**Todd M. Richardson,**

*General Deputy Assistant Secretary for Policy Development and Research.*

[FR Doc. 2019–11763 Filed 6–4–19; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–IA–2019–0045; FXIA16710900000–190–FF09A30000]**

### Foreign Endangered Species; Receipt of Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

**DATES:** We must receive comments by July 5, 2019.

**ADDRESSES:**

*Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2019–0045.

*Submitting Comments:* When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2019–0045.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2019–0045; U.S. Fish and Wildlife Service Headquarters, MS: PERMA; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, by phone at 703–358–2104, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Public Comment Procedures

*A. How do I comment on submitted applications?*

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

*B. May I review comments submitted by others?*

You may view and comment on others' public comments at *http://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

*C. Who will see my comments?*

If you submit a comment at *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

## III. Permit Applications

We invite comments on the following applications.

*Applicant: Zoological Society of San Diego, San Diego, CA; Permit No. 069323*

The applicant requests renewal of their permit to authorize the export and re-export of captive-bred/captive hatched live specimens and the export of viable eggs of California condors (*Gymnogyps californianus*) originating in the United States, as well as the re-export of wild live specimens of California condors originating in Mexico, to La Secretaria de Medio Ambiente y Rescoursos Naturales (SEMARNAT), San Angel, Mexico, for reintroduction into the wild to enhance the survival of the species through completion of identified tasks and objectives mandated under the U.S. Fish and Wildlife Service Condor Recovery Plan. The notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant: Tanganyika Wildlife Foundation, Goddard, KS; Permit No. 28639D*

The applicant requests a permit to import one captive-bred siamang (*Symphalangus syndactylus*) from Athens Zoo, Spata, Greece, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

*Applicant: George Washington University, Washington, DC; Permit No. 27354D*

The applicant requests a permit to re-export biological samples of gorilla (*Gorilla gorilla*) to the Rwanda Development Board—Department of Tourism and Conservation, Kigali, Rwanda, for the purpose of scientific research. This notification is for a single re-export.

*Applicant: Wildlife Conservation Society, New York, NY; Permit No. 26609D*

The applicant requests a permit to export one captive-bred Siberian tiger (*Panthera tigris altaica*) to Zoo Vienna, Vienna, Austria, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

*Applicant: Phoenix Herpetological Society, Scottsdale, AZ; Permit No. 19818A*

The applicant requests to amendment of an existing captive-bred wildlife registration under 50 CFR 17.21(g) to add the Komodo Island monitor (*Varanus komodoensis*). This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant: Brevard Zoo, Melbourne, FL; Permit No. 32147D*

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

| Common name | Scientific name |
|---|---|
| Cheetah | *Acinonyx jubatus.* |
| Siamang | *Symphalangus syndactylus.* |
| Ring-tailed lemur | *Lemur catta.* |
| Cotton-top tamarin | *Saguinus oedipus.* |
| Baird's tapir | *Tapirus bairdii.* |
| Radiated tortoise | *Astrochelys radiata.* |
| Golden parakeet | *Guarouba guarouba.* |

*Applicant: Texas Tech University, Lubbock, TX; Permit No. 35586D*

The applicant requests authorization to export and reimport nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant: Natural History Museum of Los Angeles County, Los Angeles, CA; Permit No. 37882D*

The applicant requests authorization to export and reimport nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant: Ronnie Williams, Highland Village, TX; Permit No. 37469D*

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

## IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *http://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

## V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2019–11674 Filed 6–4–19; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R3–ES–2019–N057; FXES11130300000–190–FF03E00000]**

## Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before July 5, 2019.

**ADDRESSES:**

*Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

**FOR FURTHER INFORMATION CONTACT:** Carlita Payne, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech

impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

## Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

## Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies, Tribes, and the public to comment on the following applications.

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE33366D | Huron Pines, Gaylord, MI. | Hungerford's crawling water beetle (*Brychius hungerfordi*). | MI | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, temporary hold, release, relocate. | New. |
| TE33374D | GEI Consultants of Michigan, P.C., Traverse City, MI. | Hine's emerald dragonfly (*Somatochlora hineana*), Hungerford's crawling water beetle (*Brychius hungerfordi*), clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma torulosa rangiana*), rayed bean (*Villosa fabalis*), snuffbox (*Epioblasma triquetra*). | MI | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, temporary hold, tag, release. | New. |
| TE33381D | Neosho National Fish Hatchery, Neosho, MO. | Hungerford's crawling water beetle (*Brychius hungerfordi*), Arkansas fatmucket (*Lampsilis powellii*), fat pocketbook (*Potamilus capax*), Neosho mucket (*Lampsilis rafinesqueana*), Ouachita rock pocketbook (*Arkansia wheeleri*), pink mucket (*lampsilis abrupta*), rabbitsfoot (*Quadrula cylindrica cylindrica*), scaleshell (*Leptodea leptodon*), sheepnose (*Plethobasus cyphyus*), snuffbox (*Epioblasma triquetra*), spectaclecase (*Cumberlandia monodonta*), winged mapleleaf (*Quadrula fragosa*). | AR, KS, MI, MO, OK. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, hold, tag, propagate, culture, release, relocate. | New. |
| TE33518D | Julia Auckland, Denver, CO. | Dakota skipper (*Hesperia dacotae*), Poweshiek skipperling (*Oarisma poweshiek*), rusty patched bumble bee (*Bombus affinis*). | MN, ND, SD | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, hold, release. | New. |
| TE33516D | Ai Wen, Cedar Falls, IA. | Rusty patched bumble bee (*Bombus affinis*). | IA | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, hold, release. | New. |
| TE33515D | Derek Rosenberger, Bourbonnais, IL. | Rusty patched bumble bee (*Bombus affinis*). | IL | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, hold, release. | New. |

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE14588C | Dane Smith, Columbia, MO. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*). | Add new locations—AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY—to existing authorized location: MO. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, band, radio-tag, wing biopsy, release. | Amend. |
| TE11170C | Ashleigh Cable, Richmond, KY. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*). | Add new locations—AL, AR, CT, DE, FL, GA, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WV, WI—to existing authorized location: IL. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, band, radio-tag, collect hair and fecal samples, wing biopsy, release. | Amend. |
| TE33467D | Aaron McAlexander, Unionville, IN. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus towsendii ingens*), Virginia big-eared bat (*C.t. virginianus*). | AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WI, WV. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, harp trap, band, radio-tag, light tag, collect hair and fecal samples, wing biopsy, enter hibernacula and maternity roost caves, salvage, release. | New. |
| TE35973D | Alex Patterson, Beckley, WV. | Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*). | IL, OH, PA, WV | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, harp trap, band, radio-tag, enter hibernacula, release. | New. |
| TE06809A | USDA Forest Service, North Central Research Station, Columbia, MO. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus towsendii ingens*). | AL, AR, GA, IL, IN, IA, KS, KY, MI, MO, NC, OH, PA, SC, TN, VA, WI, WV. | Conduct presence/absence surveys, document habitat use, conduct scientific research and population monitoring, evaluate impacts. | Add new activities—collect serum and fecal samples, microbial skin swabs, PIT tag, and hold—to existing authorized activities: Capture, handle, mist-net, harp trap, band, radio-tag, collect hair samples, wing biopsy, release. | Amend. |
| TE33473D | Antoinette Sitting Up Perez. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*). | MO | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, harp trap, band, radio-tag, enter caves, release. | New. |
| TE35971D | Jennifer Mullikin, St. Louis, MO. | Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*). | IL, IN, IA, MI, MN, MO, OH. | Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts. | Capture, handle, mist-net, harp trap, band, radio-tag, release. | New. |

## Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Next Steps**

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

**Authority:** We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2019–11664 Filed 6–4–19; 8:45 am]

BILLING CODE P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWO220000 L10200000.PK0000; OMB Control Number 1004–0019]**

### Agency Information Collection Activities; Grazing Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 5, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Jean Sonneman. U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *jsonneman@blm.gov.* Please reference OMB Control Number 1004–0019 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, please contact Maggie Marston by email at *mmarston@blm.gov,* or by telephone at 202–912–7444. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for the above person.

**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 BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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.

The following information pertains to this request:

*Abstract:* Control number 1004–0019 authorizes range improvements to improve livestock grazing management, improve watershed conditions, enhance wildlife habitat on BLM lands, or serve similar purposes.

*Title of Collection:* Grazing Management: Range Improvements Agreements and Permits (43 CFR subpart 4120).

*OMB Control Number:* 1004–0019.

*Forms:*

- 4120–6, Cooperative Range Improvement Agreement; and
- 4120–7, Range Improvement Permit.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Holders of BLM grazing permits or grazing leases; affected individuals and households; and affected tribal, state and county agencies.

*Estimated Number of Annual Responses:* 1,110.

*Estimated Completion Time per Response:* Varies from 1 to 2 hours per response.

*Estimated Number of Annual Burden Hours:* 1,640.

*Respondent's Obligation:* Required to obtain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

The estimated annual burdens of this collection are itemized below:

| Type of response (A) | Number of responses (B) | Hours per response (C) | Total hours (column B × column C) (D) |
|---|---|---|---|
| Cooperative Range Improvement Agreement (43 CFR part 4120.3–2) Form 4120–6 related non-form information | 500 | 2 | 1,000 |
| Range Improvement Permit (43 CFR part 4120.3–3) Form 4120–7 and related non-form information | 30 | 2 | 60 |
| Affected Public/Individuals and Households (43 CFR 4120.5–1) | 50 | 1 | 50 |
| Affected Public/Tribal, State and County Agencies (43 CFR 4120.5–2) | 530 | 1 | 530 |
| Totals | 1,110 | | 1,640 |

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*).

**Chandra Little,**

*Acting Information Collection Clearance Officer, Bureau of Land Management.*

[FR Doc. 2019–11813 Filed 6–4–19; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–DTS–27995; 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 May 18, 2019, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by June 20, 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 May 18, 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:

**GEORGIA**

**Morgan County**

Nolan, James A., House, 4690 A Bostwick Hwy., Madison, SG100004106

**MISSOURI**

**Jackson County**

Kansas City Star Building, 1729 Grand Blvd., Kansas City, SG100004102

**NEVADA**

**Churchill County**

Maine Street Historic District, Downtown along Maine & Center Sts. & Williams Ave., Fallon, SG100004098

**NEW JERSEY**

**Monmouth County**

Brookdale Farm Historic District, 805 Newman Springs Rd., Middletown Township, SG100004105

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

**MONTANA**

**Blaine County**

Cow Island Landing Skirmish Site, Approx. 28 mi. NE of Winifred, Winifred vicinity, SG100004103

Cow Creek Skirmish Historic District, Approx. 28 mi. NE of Winifred, Winifred vicinity, SG100004104

**UTAH**

**Garfield County**

Chaffin Camp Site (Ranching Resources of the Robbers Roost/Under the Ledge areas within Canyonlands NP and Glen Canyon NRA MPS), Address Restricted, Hite vicinity, MP100004110

**Wayne County**

Cowboy Rock Shelter Site (Ranching Resources of the Robbers Roost/Under the Ledge areas within Canyonlands NP and Glen Canyon NRA MPS), Address Restricted, Hanksville vicinity, MP100004109

**WASHINGTON**

**Grant County**

Columbia Basin Project Irrigation Division Headquarters Office, 32 C St. NW, Ephrata, SG100004099

**Authority:** Section 60.13 of 36 CFR part 60.

Dated: May 20, 2019.

**Christopher Hetzel,**

*Acting Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2019–11670 Filed 6–4–19; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–BSD–CONC–NPS0027443; PPWOBSADC0, PPMVSCS1Y.Y00000 (199); OMB Control Number 1024–0029]**

## Agency Information Collection Activities; National Park Service Concessions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 5, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0029 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR by mail, contact Kurt Rausch, Acting Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Washington, DC 20240; or by email at *kurt_rausch@nps.gov;* or by telephone at 202–513–7156. Please reference OMB Control Number 1024–0029 in the subject line of your comments.

**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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the

NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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:* Private businesses under contract to the NPS manage food, lodging, tours, whitewater rafting, boating, and many other recreational activities and amenities in more than 100 national parks. These services gross more than $1 billion every year and provide jobs for more than 25,000 people during peak season.

The regulations codified in 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (54 U.S.C. 101911 *et seq.* also referred to as Pub. L. 105–391), which provides legislative authority, policies, and requirements for the solicitation, award, and administration of NPS concession contracts.

Furthermore, 54 U.S.C. 101911 *et seq.* provides that ''all proposed concession contracts shall be awarded by the Secretary to the person, corporation or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. Such competitive process shall include simplified procedures for small, individually-owned, concessions contracts.''

We collect the following information associated with the administration of concessions:

- Description of how respondent will conduct operations to minimize disturbance to wildlife; protect park resources; and provide visitors with a high quality, safe, and enjoyable visitor experience.
- Organizational structure and history and experience with similar operations.
- Details on violations or infractions and how they were handled.
- Financial information and demonstration that respondent has credible, proven track record of meeting obligations.

**Concessioner Annual Financial Report (Forms 10–356, 10–356A, and 10–356B)**

The Concessioner Annual Financial Report provides concessioner financial information as required by each concession contract. This information is necessary to comply with the requirements placed on the Secretary of the Interior by Congress. Title IV, Section 407 of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391) requires that ''a concessions contract shall provide for payment to the Government of a franchise fee or other such monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract.'' In accordance with 36 CFR part 51, subpart I concession contracts are required to ''provide for payment to the Government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved.'' In order to verify the accuracy of the report and payments of franchise fees, concessioners with gross receipts of over $1 million are required to have financial statements audited by an independent certified public accountant and have them express an opinion on the financial statements. Concessioners with gross receipts between $500,000 and $1 million must have a review opinion by an independent accountant, a lesser requirement and burden.

*Form 10–356, ''Concessioner Annual Financial Report''*—is an accumulation of various financial statements commonly used by industry for reporting in conformance with generally accepted accounting principles. The information provides a comprehensive view of the concessioner's financial situation at the end of its fiscal year and the concessioner's activity over the preceding year. Careful analysis provides an effective tool in the decision making process and for the tracking of concessioner and Government contractual obligations for payments and maintenance and construction requirements. The financial information being collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees can be determined in a timely manner and without an undue burden on the concessioner. We collect the following information:

- Cover sheet provides identifying information and the concessioner's certification as to the accuracy of the accompanying report.
- Schedule A is an income statement summarizing the financial activity (gross receipts, expenses, and net income) of the period being reported on.
- Schedule A–1 is a worksheet for calculating the comprehensive income.
- Schedule B is a worksheet for calculating the franchise fee.
- Schedule C is a balance sheet comparing the sources (liabilities and equity) with the uses (assets) of the capital of the company at the end of the fiscal year.
- Schedule D is a detail of the fixed assets reported on the balance sheet with a special listing of possessory interest or leasehold improvement assets (potential obligations of the Government).
- Schedule E is a statement of cash flows.
- Schedule F is space reserved for explanatory notes to the report.
- Schedule G is a breakdown of gross receipts by major departments.
- Schedule H is a detail of departmental income and expenses.
- Schedule I is a detail of general and administrative expenses.
- Schedule J lists ownership and compensation to officers and owners.
- Schedule K details the additions and disposals of fixed assets during the year.
- Schedule L is a supporting schedule for any amounts that need further explanation or detail.
- Schedule M contains various operational statistics commonplace for the major services provided in parks.
- Schedule P provides an accounting for those concessioners who have a contractual repair and maintenance reserve requirement.
- Schedule Q lists the projects from that reserve.

*Form 10–356A, ''Concessioner Annual Financial Report (For Concessioners with Gross Receipts Less than $500,000)''*—In an attempt to reduce administrative burden, concessioners with gross receipts under $500,000 submit only a shorter report (Form 10–356A). This ''short form'' is a simplified income statement, balance sheet, and operation statistics. Concessioners with gross receipts under $250,000 do not have to submit the balance sheet.

*Form 10–356B, ''Concessioner Annual Financial Report (For Concessioners*

*with Special Accounts and Utility Add-ons)*''—A limited number of concessioners have special accounts in lieu of franchise fees or rate add-ons to offset high costs for unique operations. To reduce administrative burden, additional schedules for reporting on these unique contract inclusions are provided in a separate form. The additional schedules include:

- Schedule N provides an accounting for those concessioners who have Special Accounts.
- Schedule O lists expenditures from Special Accounts.
- Schedule R provides an accounting for those concessioners who have approved rate add-ons.

**Proposals for Concession Opportunities (Forms 10–357A, 10–357B, 10–358, 10–359A, 10–359B).**

The public solicitation process begins with the issuance of a prospectus to invite the general public to submit proposals for the contract. The prospectus describes the terms and conditions of the concession contract to be awarded, the procedures to be followed in the selection of the best proposal, and the information that must be provided. We collect the following information from every offeror:

*Offeror's Transmittal Letter.* This letter identifies the name of the entity offering a proposal to operate a concession contract and that entity's contact information.

*Certificate of Business Entity Offeror.* This form identifies the type of entity for the offeror, such as corporation, Limited Liability Company, partnership, etc.

- *Form 10–357A,* ''*Business Organization Information Form for Corporation, Limited Liability Company, Partnership or Joint Venture.*''
- *Form 10–357B,* ''*Business Organization Information Form for Individual or Sole Proprietorship.*''

*Form 10–358,* ''*Business History Information Form.*'' We request information about the offeror's business history to understand any adverse history that could impact future operations under a concession contract.

*Credit Report.* We request offerors submit a credit report so that we can understand the offeror's credit history and any risks of contracting with the entity.

*Offeror's Financial Projection:* The Service needs this information to verify there are enough funds available to be able to pay the required expenses to operate the Draft Contract and satisfy any other existing debt. If the offeror's total debts exceed current assets, provide a narrative explaining how these debts will be paid.

- *Form 10–359A Large Concessions*
- *Form 10–359B Small Concessions*

In addition to this standard information, we also collect additional information in narrative and form format. The amount of information or degree of detail requested varies widely, depending upon the size and scope of the business opportunity. For example, a much greater amount of detailed information would be required for a multi-unit lodging and food service operation (such as that at Yellowstone), than would be required for a small firewood sales operation. This additional information includes the following which coincide with the five principal selection factors:

- Proposals to protect, conserve and preserve resources of the park. These proposals respond to specific resource management objectives and issues at the park and contract in question.
- Proposals to provide necessary and appropriate visitor services at reasonable rates. These proposals respond to specific visitor service questions at the park and contract in question.
- The experience and related background of the offeror, including past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the draft concession contract.
- The financial capability of the offeror to carry out its proposal. In particular, we ask for projected financials including initial investments, startup expenses, income statement, operating assumptions, cash flow statement, recapture of investments, and all associated assumptions.
- The amount of the proposed minimum franchise fee and other forms of financial consideration.

We use all of the information provided to objectively evaluate offers received for a particular business opportunity, assure that the park resources will be adequately protected, and determine which offeror will provide the best service to visitors.

**Amendments**

In accordance with 36 CFR 51.15, an offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

In accordance with 36 CFR 51.32, if the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal. If the preferred offeror amends the proposal within the time period allowed, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract.

**Appeals**

Regulations in 36 CFR 51.47 state that any person may appeal to the Director, a determination that a concessioner is not a preferred offeror for the purposes of a right of preference in renewal and that the appeal must specify the grounds for the appeal. If the appellant does not identify the specific grounds on which it objects to the Director's initial preferred offeror determination, the Director could make a final determination without fully understanding the appellant's concerns or without taking into consideration important information the appellant may wish to submit in support of its position.

**Request To Construct a Capital Improvement**

In accordance with 36 CFR 51.54, a request for approval to construct a capital improvement must include appropriate plans and specifications for the capital improvement. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director, NPS to determine that they are elements of construction cost. The approval requirements of this and other sections of 36 CFR part 51 also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures.

**Construction Report**

In accordance with 36 CFR 51.55, a concessioner obtaining a leasehold surrender interest must submit a

construction report to the NPS. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the NPS, a written certification from a certified public accountant (CPA). The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP), and that all components are eligible direct or indirect construction costs. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

**Application To Sell or Transfer Concession Operation**

36 CFR part 51, subpart J, provides that a concessioner must obtain NPS approval to assign, sell, convey, grant, contract for, or otherwise transfer: Any concession contract; any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise; any controlling interest in a concessioner or concession contract; or any leasehold surrender interest or possessory interest obtained under a concession contract. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Information includes, but is not limited to:

- Instruments proposed to implement the transaction.
- Narrative description of the proposed transaction.
- Opinion of counsel that the proposed transaction is lawful under all applicable Federal and State laws.
- Statement as to the existence and nature of any litigation relating to the proposed transaction.
- Description of the management qualifications, financial background, and financing and operational plans of any proposed transferee.
- Description of all financial aspects of the proposed transaction.
- Prospective financial statements (proformas).
- Schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets.

**Recordkeeping**

In accordance with 36 CFR 51.98, a concessioner (and any subconcessioner) must keep and make available to NPS, records for the term of the concession contract and for 5 years after the termination or expiration of the concession contract.

*Title of Collection:* National Park Service Concessions, 36 CFR 51.

*OMB Control Number:* 1024–0029.

*Form Number:* NPS Forms 10–356, 10–356A, 10–356B, 10–357A, 10–357B, 10–358, 10–359A, and 10–359B.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Individuals, businesses, and nonprofit organizations.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion for proposals, amendments, and appeals; annually for financial reports; and ongoing for recordkeeping.

*Total Estimated Annual Nonhour Burden Cost:* $425,000 $420,000 for proposals associated with expenses for printing, travel for onsite visits, and professional fees; and, $5,000 for application to sell or transfer concession operation associated with preparing and submitting an application, other than expenses for printing, estimated to be approximately $250 per application (× 20 applications).

| Activity | Total annual responses | Completion time per response (hours) | Total annual burden hours * |
|---|---|---|---|
| Concessioner Annual Financial Report: | | | |
| Form 10–356, "Concessioner Annual Financial Report" | 150 | 15 | 2,250 |
| Form 10–356A, "Concessioner Annual Financial Report (For Concessioners with Gross Receipts Less than $500,000)" | 350 | 4 | 1,400 |
| Form 10–356B, "Concessioner Annual Financial Report (For Concessioners with Special Accounts and Utility Add-ons)" | 30 | 2 | 60 |
| Proposals for Concession Opportunities: | | | |
| Form 10–359A, "Large Concession" | 30 | 2 | 7,200 |
| Form 10–359B, "Small Concession" | 60 | 80 | 4,800 |
| Amendments | 1 | 1 | 1 |
| Appeals | 1 | .5 | 1 |
| Request To Contruct a Capital Improvement: | | | |
| Large Projects | 31 | 16 | 496 |
| Small Projects | 89 | 8 | 712 |
| Construction Report: | | | |
| Large Project | 31 | 56 | 1,736 |
| Small Project | 89 | 24 | 2,136 |
| Application To Sell or Transfer a Concession Operation | 20 | 80 | 1,600 |
| Recordkeeping: | | | |
| Large Concessions | 150 | 800 | 120,000 |
| Small Concessions | 350 | 50 | 17,500 |
| Totals | 1,382 | ..... | 159,892 |

* 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.*).

**Phadrea Ponds,**

*Acting Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2019–11707 Filed 6–4–19; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–IMR–YELL–NPS0027446; PPIMYELL60 PPMVSCS1Z.Y00000 (199); OMB Control Number 1024–0266]**

### Agency Information Collection Activities; Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS, we) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 5, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov*; or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0266 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR by mail, contact Willie Burkhardt, Concessions Management Specialist, P.O. Box 168, Mammoth Hot Springs Yellowstone National Park, WY 82190–0168; or by email at *willie_burkhardt@nps.gov*; or by telephone at 307–344–2272. Please reference OMB Control Number 1024–0266 in the subject line of your comments.

**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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 NPS authorized by the regulations in 36 CFR 7.13(l) to establish a management framework that allows the public to experience the unique winter resources and values at Yellowstone National Park. The final rule includes provisions that allow greater flexibility for commercial tour operators, provide mechanisms to make the park cleaner and quieter during the winter seasons, reward over-snow vehicle innovations and technologies, and allow increases in visitation. It also requires all over-snow vehicles (OSV) operating in the park to meet air and sound emission requirements and be accompanied by a guide. This rule also requires that commercial OSV operators provide the following in a monthly use report and maintain certain records relating to:

*Emission and Sound Standards* (§ 7.13(l)(4)(vii) and (5)). Only OSVs that meet NPS emission and sound standards may operate in the park. Before the start of each winter season:

(a) Snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the standards.

(b) Snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the standards.

*Transportation Events* (§ 7.13(l)(11)(i)–(iii)). So that we can monitor compliance with the required average and maximum size of transportation events, as of December 15, 2014, each commercial tour operator must:

(a) Maintain accurate and complete records on the number of snowmobiles and snowcoaches he or she brings into the park on a daily basis. These records must be made available for inspection by the park upon request.

(b) Provide a monthly use report on their activities. Form 10–650, ''Concessioner Monthly Use Report'', available on the park website, is used to collect information for transportation events.

*Enhanced Emission Standards* (§ 7.13(l)(11)(iv)). To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, each commercial tour operator must:

(a) Before the start of each winter season, demonstrate, by means acceptable to the Superintendent, that his or her snowmobiles or snowcoaches meet the enhanced emission standards; and

(b) Maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not.

We will use the information collected to: (1) Ensure that OSVs meet NPS emission standards to operate in the park; (2) evaluate commercial tour operators' compliance with allocated transportation events and daily and seasonal OSV group size limits; (3) ensure that established daily transportation event limits for the park are not exceeded, (4) confirm that commercial tour operators do not run out of authorizations before the end of the season and create a gap when prospective visitors cannot be accommodated, and (5) guarantee compliance with applicable laws and regulations.

*Title of Collection:* Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park, 36 CFR 7.13(l).

*OMB Control Number:* 1024–0266.

*Form Number:* NPS Form 10–650.

*Type* of Review: Extension of a currently approved collection.

*Description of Respondents:* Businesses desiring to operate snowcoaches and snowmobiles in Yellowstone National Park.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

| Activity | Estimated annual respondents | Estimated annual responses | Average completion time per response (hours) | Estimated annual burden hours * |
|---|---|---|---|---|
| **Transportation Events—Reporting and Recordkeeping for Snowcoaches and Snowmobiles** | | | | |
| Reporting | 15 | 45 | 1.5 | 67.5 |
| Recordkeeping | | | .5 | 22.5 |
| **Meet Emission/Sound Standards** | | | | |
| Private Sector | 14 | 14 | .5 | 7 |
| **Meet Enhanced Emission Standards** | | | | |
| Reporting | 5 | 5 | .25 | 1.25 |
| Recordkeeping | | | .25 | 1.25 |
| Totals | 34 | 64 | | 100 |

* 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.*).

**Phadrea Ponds,**

*Acting Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2019–11709 Filed 6–4–19; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–CRPS–NPS0027448; PPWOCRADI0; PPMRSCR1Y.Y00000; 199P103601; OMB Control Number 1024–0271]**

### Agency Information Collection Activities; Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before August 5, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; by email at *phadrea_ponds@nps.gov*; or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0271 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR by mail, contact Jennifer Talken-Spaulding, Bureau Cultural Anthropologist, National Park Service, 1849 C Street NW, Mail Stop 7360 (WASO–TRAC), Washington, DC 20240; or by email at *jennifer_talken-spaulding@nps.gov*; or by telephone at 202–446–4081. Please reference OMB Control Number 1024–0271 in the subject line of your comments.

**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 Information Collection Request (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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 the Office of Management and Budget (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:* Gathering and removing plants or plant parts is currently prohibited in National Park System areas unless specifically authorized by Federal statute or treaty rights or conducted under the limited circumstances authorized by an existing regulation codified in 36 CFR 2.1(c). Regulations codified in 36 CFR part 2 allow the gathering and removal of plants or plant parts by enrolled members of federally recognized tribes for traditional purposes. The regulations authorize agreements between the NPS and federally recognized tribes to facilitate the continuation of tribal cultural practices on lands within areas of the National Park System where those practices traditionally occurred, without causing a significant adverse impact to park resources or values. The regulations:

- Respect tribal sovereignty and cultural practices,
- further the government-to-government relationship between the United States and the Indian Tribes,
- provide system-wide consistency for this aspect of NPS-Tribal relations.

The agreements explicitly recognize the special government-to-government relationship between the United States and Indian Tribes, and are based upon mutually agreed upon terms and conditions subject to the requirements of 36 CFR 2.6(f). The agreements serve as the documents through which the NPS authorizes tribal gathering implemented by an accompanying permit authorized by 36 CFR 1.6. Only enrolled members of a federally recognized tribe are allowed to collect plants or plant parts, and the tribe must be traditionally associated with the specific park area. This traditional association must predate the establishment of the park. The plant gathering must meet a traditional purpose that is a customary activity and practice rooted in the history of the tribe and is important for the continuation of the tribe's distinct culture. Authorized plant gathering must be sustainable and may not result in a significant adverse impact on park resources or values. The sale and commercial use of plants or plant parts within areas of the National Park System will continue to be prohibited by the NPS regulations in 36 CFR 2.1(c)(3)(v).

The information collections associated with 36 CFR part 2 include:

(1) The initial request from a tribe that we enter into an agreement with the tribe for gathering and removal of plants or plant parts for traditional purposes. The request must include the information specified in § 2.6(c).

(2) The agreement defines the terms under which the NPS may issue a permit to a tribe for plant gathering purposes. To make determinations based upon tribal requests or to enter into an agreement, we may need to collect information from specific tribal members or tribes who make requests. The agreement must contain the information specified in § 2.6(f).

(3) Tribes may submit an appeal to the NPS to provide additional information on historical relationship of the tribe, traditional uses of plants to be gathered, and/or the impact of gathering on the resource of concern in the event of a denial by the NPS on this issue.

*Title of Collection:* Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes, 36 CFR 2.

*OMB Control Number:* 1024–0271.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Indian Tribes.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

| Activity/requirement | Estimated number of annual responses | Completion time per response (hours) | Estimated total annual burden hours |
|---|---|---|---|
| Initial Written Request from an Indian Tribal Official | 20 | 4 | 80 |
| Agreement with Indian Tribe | 5 | 20 | 100 |
| Appeals | 5 | 10 | 50 |
| Total | 30 | | 230 |

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.*).

**Phadrea Ponds,**

*Acting Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2019–11710 Filed 6–4–19; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–19–020]**

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** June 6, 2019 at 9:45 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–622 and 731–TA–1448 (Preliminary) (Dried Tart Cherries from Turkey). The Commission is currently scheduled to complete and file its determinations on June 7, 2019; views of the Commission are currently scheduled to be completed and filed on June 14, 2019.
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 31, 2019.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2019–11843 Filed 6–3–19; 11:15 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Foodservice Equipment and Components Thereof, DN 3390;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission

(USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Illinois Tool Works Inc.; Vesta Global Limited; Vesta (Guangzhou) Catering Equipment Co., Ltd.; and Admiral Craft Equipment Corp. on May 30, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foodservice equipment and components thereof. The complaint names as respondents: Guangzhou Rebenet Catering Equipment Manufacturing Co., Ltd. of China; Zhou Hao of China; Ma Hongwei of China; Aceplus International Limited (aka Ace Plus International Ltd. of China; Guangzhou Liangsheng Trading Co., Ltd. of China; Zeng Zhaoliang of China; and Jiang Ji'an of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3390'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 31, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–11706 Filed 6–4–19; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–452 and 731–TA–1129–1130 (Second Review)]**

## Raw Flexible Magnets From China and Taiwan; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countevailing duty order on raw flexible magnets from China and the antidumping duty orders on raw flexible magnets from China and

Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** April 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** (Julie Duffy (202–708–2579)), 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 review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On April 12, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 8, January 2, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

*Staff report.*—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on June 5, 2019, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before June 11, 2019 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 11, 2019. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 31, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–11748 Filed 6–4–19; 8:45 am]

**BILLING CODE 7020–02–P**

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response submitted by Magnum Magnetics Corporation to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

### TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before June 20, 2019.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0042, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and OSHA docket number (OSHA–2007–0042). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about

themselves or others) such as Social Security Numbers, birth dates, and medical data.

*Docket:* To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

*Extension of comment period:* Submit requests for an extension of the comment period on or before June 20, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for expansion of the current recognition as a NRTL. TUVRNA requests the addition of three (3) test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has five facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/tuv.html.*

## II. General Background on the Application

TUVRNA submitted an application, dated August 7, 2018 (OSHA–2007–0042–0033), to expand recognition to include the addition of three test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 61010–2–010 | Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials. |
| UL 61010–2–020 | Standard for Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges. |
| UL 61010–2–101 | Safety Requirement for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment. |

## III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files indicate that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of these three test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These

materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

### Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on May 30, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–11740 Filed 6–4–19; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0028]**

## MET Laboratories, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the applications of MET Laboratories, Inc., for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before June 20, 2019.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

*Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2006–0028, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 10:00 a.m.–3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2006–0028). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security Numbers, birth dates, and medical data.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

*Extension of comment period:* Submit requests for an extension of the comment period on or before June 20, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of the Application for Expansion

OSHA is providing notice that MET Laboratories, Inc. (MET), is applying for expansion of the current recognition as a NRTL. MET requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or

modifications of that scope. OSHA maintains an informational web page for each NRTL, including MET, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230. A complete list of MET's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/met.html.*

## II. General Background on the Application

MET submitted three applications, one dated January 10, 2018 (OSHA–2006–0028–0046), one dated May 18, 2018 (OSHA–2006–0028–0044), and another one dated June 28, 2018 (OSHA–2006–0028–0045). The applications will expand MET's NRTL Scope of Recognition to include three additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these application.

Table 1 lists the appropriate test standards found in MET's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 696 | Electric Toys. |
| UL 962 | Household and Commercial Furnishings. |
| UL 60079–7 | Explosive Atmosphere—Part 7: Equipment Protection by Increased Safety "e". |

## III. Preliminary Findings on the Application

MET submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that MET can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these three test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of MET's application.

OSHA welcomes public comment as to whether MET meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by June 20, 2019. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0028.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health whether to grant MET's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

## IV. Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on May 30, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–11729 Filed 6–4–19; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0042]**

### TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces its final decision to expand the scope of recognition for TUV Rheinland of North America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on June 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's website includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA) as an NRTL. TUVRNA's expansion covers the addition of four recognized testing and certification sites and two recognized testing standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition, and is not a delegation or grant of government authority. As a result of

recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA submitted two applications, one dated March 30, 2016 (OSHA–2007–0042–0030), and another dated April 19, 2017 (OSHA–2007–0042–0031), to expand recognition to include the addition of four recognized testing and certification sites. The sites are located at: TUV Rheinland (Shenzhen) Co, Ltd, 1F East & 2–4F, Cybio Technology Building No. 1, No. 16, Keibei 2nd Road, High-Tech Industrial Park North, Nashan District, 518057 Shenzhen, China; TUV Rheinland (Shanghai) Co, Ltd, TUV Rheinland Building No. 177, Lane 777, West Guangzhong Road, Zhabei District, Shanghai 200072, P.R. China; TUV Rheinland Taiwan Ltd., 11F, No. 758, Sec. 4, Bade Rd., Songshan District, Taipei City 105, Taiwan; and TUV Rheinland Taiwan Ltd., Taichung Branch Office, No. 9, Lane 36, Minsheng Rod., Sec. 3, Daya District, Taichung City 428, Taiwan. TUVRNA's applications also requested the addition of two test standards to the scope of recognition. OSHA staff performed a detailed analysis of the application and other pertinent information. OSHA staff also performed an on-site review of TUVRNA's testing facilities on August 7–8, 2017, at TUV Rheinland Shanghai, August 10–11, 2017, at TUV Rheinland Shenzhen, August 14–15, 2017, at TUV Rheinland Taipei, and August 16, 2017, at TUV Rheinland Taichung, in which the assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVRNA addressed these issues sufficiently. OSHA staff recommended that OSHA should grant the applications for expansion to include these four sites and two test standards.

OSHA published the preliminary notice announcing TUVRNA's expansion application in the **Federal Register** on July 30, 2018 (83 FR 36625). The agency requested comments by August 14, 2018, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVRNA's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210. Docket No. OSHA–2007–0042 contains all materials in the record concerning TUVRNA's recognition.

## II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application, conducted two detailed on-site assessments, and examined other pertinent information. Based on a review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the limitation and conditions listed below.

OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to include the four test sites at TUVRNA Shenzhen, China; Shanghai, China; Taipei, Taiwan; and Taichung, Taiwan as listed above. OSHA's recognition of these sites limits TUVRNA to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in TUVRNA's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

Additionally, OSHA is proceeding with this final notice to expand TUVRNA's scope to include two additional test standards to the scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| NFPA 496 | Purged and Pressurized Enclosures for Electrical Equipment. |
| UL 698A | Industrial and Classification of Mercantile and Bank Burglar-Alarm Systems. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVRNA must abide by the following conditions of the recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitation and conditions specified above.

### III. Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on May 30, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–11741 Filed 6–4–19; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

**DATES:** Comments regarding this information collection are best assured of having their full effect if received by July 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

**SUPPLEMENTARY INFORMATION:** NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

*Title of Collection:* Grantee Reporting Requirements for Materials Research Science and Engineering Centers (MRSECs).

*OMB Number:* 3145–0230.

*Overview of this Information Collection:*

The Materials Research Science and Engineering Centers (MRSECs) Program supports innovation in interdisciplinary research, education, and knowledge transfer. MRSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. MRSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

MRSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. MRSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

MRSECs are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, MRSECs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov* and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the MRSEC effort. Such reporting requirements are included in the cooperative agreement that is binding between the academic institution and NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) shared experimental facilities, (6) diversity, (7) management, and (8) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

MRSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, effectively they constitute the last annual report; the Program Officer maintains a cumulative database with all relevant achievements and metrics.

*Use of the Information:* NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

*Estimate of Burden:* 80 hours per center for 20 centers for a total of 1,600 hours.

*Respondents:* Non-profit institutions.

*Estimated Number of Responses per Report:* One from each of the 20 MRSECs.

Dated: May 31, 2019.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2019–11720 Filed 6–4–19; 8:45 am]

**BILLING CODE 7555–01–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

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from the requirements of the Commission's regulations that require a written examination and operating test to be requested and administered to 11 operator license applicants at Vogtle Electric Generating Plant (VEGP) Unit 3 in response to a December 20, 2018, request from Southern Nuclear Operating Company (SNC). The NRC is giving these 11 applicants credit for the written examination and operating test they took and passed after they applied for a license to operate Virgil C. Summer Nuclear Station (VCSNS) Unit 2.

**DATES:** This exemption was issued on June 5, 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 *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):*
- You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the exemption was submitted by letter dated December 20, 2018 and is available in ADAMS under Package Accession No. ML19030A226. The request was supplemented by letter dated March 4, 2019, and April 16, 2019 (ADAMS Accession Nos. ML19063B575 and ML19121A504, respectively).
- *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. Background

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) are the holders of facility Combined License (COL) Nos. NFP–91 and NPF–92, which authorize the construction and operation of VEGP Units 3 and 4. The COLs, issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), provide, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC or the Commission now or hereafter in effect. The facilities consist of two Westinghouse Electric Company (Westinghouse) AP1000 pressurized-water reactors (PWRs) located in Burke County, Georgia.

Appendix D of 10 CFR part 52, ''Design Certification Rule for the AP1000 Design,'' constitutes the standard design certification for the Westinghouse AP1000 design, in accordance with 10 CFR part 52, subpart B. ''Standard design'' is defined in 10 CFR 52.1 as, ''a design which is sufficiently detailed and complete to support certification or approval in accordance with subpart B or E of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.''

Like VEGP Units 3 and 4, VCSNS Units 2 and 3 were also Westinghouse AP1000 PWRs under construction. The COLs for VCSNS Units 2 and 3 were issued to South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority (Santee Cooper). After construction of VCSNS Units 2 and 3 ceased in July 2017, SNC hired 11 former VCSNS Unit 2 operator license applicants who had previously passed both an NRC written examination and an operating test for VCSNS Unit 2. These 11 applicants each received a notification letter (*i.e.,* a ''pass letter'') from the NRC following their satisfactory completion of the written examination and operating test for VCSNS Unit 2. NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' Revision 11, Section ES–501, ''Initial Post-Examination Activities,'' explains the purpose of the notification letter as follows:

> A *Notification Letter* is issued if an applicant has passed the requisite written examination and operating test in accordance with 10 CFR 55.41 and 55.45 or 55.43 and 55.45, and the applicant's general medical condition meets the minimum standards under 10 CFR 55.33(a)(1) or may be accommodated with appropriate conditions under 10 CFR 55.33(b), but the applicant has not to-date completed all the elements of 10 CFR 55.31. This letter notifies the applicant that his or her license will be issued when the incomplete (deferred) items are resolved. The regional office will issue a license when the applicant and/or facility licensee, as appropriate, completes the deferred items.

Construction of VCSNS Units 2 and 3 ceased before the 11 former VCSNS Unit 2 operator license applicants completed all of the requirements in 10 CFR 55.31, and therefore they did not receive licenses to operate VCSNS Unit 2.

### II. Request/Action

Pursuant to 10 CFR 55.11, ''Specific exemptions,'' by letter dated December 20, 2018, as supplemented by letters dated March 4, 2019, and April 16, 2019, SNC requested an exemption from the requirements in 10 CFR 55.31(a)(3) and 10 CFR 55.33(a)(2) on the behalf of the 11 former VCSNS Unit 2 operator license applicants that SNC hired following cessation of construction of VCSNS Units 2 and 3. SNC also requested on the behalf of these 11 applicants that their pass letters for VCSNS Unit 2 be transferred to VEGP Unit 3. Enclosure 1 of the December 20, 2018, letter contains SNC's justification for the requested exemptions. Enclosure 2 of the April 16, 2019, letter identifies the 11 former VCSNS Unit 2 reactor operator license applicants by name and docket number.

10 CFR 55.31(a)(3) requires each applicant for an operator's license to submit a written request that the written examination and operating test be

administered to the applicant. This written request must come from an authorized representative of the facility licensee by which the applicant will be employed. Section 55.33(a)(2) states in part that the Commission will approve an initial application for a license if it finds that the applicant has passed the requisite written examination and operating test in accordance with 10 CFR 55.41 and 55.45 or 55.43 and 55.45. The written exams and operating tests determine whether an applicant for an operator's license has learned to operate a facility competently and safely, and additionally, in the case of a senior operator, whether the applicant has learned to direct the licensed activities of licensed operators competently and safely. Written exams administered to operator candidates must contain a representative sample of the topics listed in 10 CFR 55.41(b)(1)–(14), and additionally, written exams administered to senior operators must contain a representative sample of the topics listed in 10 CFR 55.43(b)(1)–(7). Operating tests must contain a representative sample of the topics listed in 10 CFR 55.45(a)(1)–(13).

Additionally, 10 CFR 55.40(a) requires the Commission to use the criteria in NUREG–1021 in effect 6 six months before the examination date to prepare the written examinations required by 10 CFR 55.41 and 55.43 and the operating tests required by 10 CFR 55.45 and to evaluate the written examinations and operating tests prepared by power reactor facility licensees. Preparing the written examinations and operating tests using the appropriate knowledge and abilities catalog, in conjunction with NUREG–1021, ensures that the written exams and operating tests include a representative sample of the items specified in 10 CFR 55.41, 55.43, and 55.45.

NUREG–2103, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Westinghouse AP1000 Pressurized-Water Reactors,'' was developed specifically for Westinghouse AP1000 PWRs. NUREG–1021, Section ES–102, ''Purpose and Format of Operator Licensing Examination Standards,'' states that NUREG–2103 ''provides the basis for developing content-valid licensing examinations for operators at Westinghouse AP–1000® PWRs.'' NUREG–1021, Appendix A, ''Overview of Generic Examination Concepts,'' explains the concept of content-validity and states, ''In the case of the NRC examinations, the intent is to measure the examinee's knowledge and ability (K/A) such that those who pass will be able to perform the duties of a reactor operator (RO) or senior reactor operator (SRO) to ensure the safe operation of the plant. . . . In order to develop valid examinations, the K/As selected for testing must be linked to and based upon a description of the most important job duties.'' To that end, the K/A statements in each of the NRC's K/A catalogs have been rated for their importance to ensure that the plant is operated in a manner consistent with the health and safety of plant personnel and the public. The rating scale is from 1 to 5, where a 5 is considered essential to safe operation. Only K/As with an importance rating of 2.5 or higher are considered appropriate content for written examinations and operating tests (unless there is a site-specific priority that justifies use of the K/A with an importance rating below 2.5).

In accordance with the guidance in NUREG–1021, Section ES–401N, ''Preparing Initial Site-Specific Written Examinations,'' a sample plan needs to be prepared for each written examination. Section ES–401N states, ''Systematically and randomly select specific K/A statements (*e.g.,* K1.03 or A2.11) from NUREG–2103 (for AP–1000®) . . . to complete each of the three tiers (*i.e.,* Tier 1, ''Emergency and Abnormal Plant Evolutions''; Tier 2, ''Plant Systems''; and Tier 3, ''Generic Knowledge and Abilities'') of the applicable examination outline.'' For the AP1000, NUREG–1021, Form ES–401N–2, ''AP–1000® Examination Outline,'' is the applicable examination outline. Once the written examination outline is complete, written examination questions can be developed from the K/A statements selected for the examination as documented on the examination outline.

The K/A catalog is also used to select topics for the operating test, which consists of an individual walkthrough portion and a simulator test. The individual walkthrough examinations are commonly referred to as ''job performance measures'' (JPMs). The individual walkthrough portion of the operating test consists of two parts, ''Administrative Topics'' and ''Control Room/In-Plant Systems,'' each of which focuses on specific K/As. In accordance with the guidance in NUREG–1021, ES–301, ''Preparing Initial Operating Tests,'' K/As for the administrative topics shall be selected from Section 2 of the applicable NRC K/A catalog. The administrative topics are conduct of operations, equipment control, radiation control, and the site's emergency plan and implementing procedures. The administrative topics identified in Section 2, ''Generic Knowledges and Abilities,'' of NUREG–2103 are also sampled on the written examination. Appendix B, ''Written Exam Guidelines,'' and Appendix C, ''Job Performance Measure Guidelines,'' of NUREG–1021 contain guidance for preparing and evaluating written examination questions and job performance measures, respectively.

## III. Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of 10 CFR part 55 as it determines are authorized by law, will not endanger life or property, and are otherwise in the public interest.

### *1. The Exemption Is Authorized by Law*

Exemptions are authorized by law where they are not expressly prohibited by statute or regulation. A proposed exemption is implicitly ''authorized by law'' if all the conditions listed therein are met (*i.e.,* will not endanger life or property and are otherwise in the public interest) and no other provision prohibits, or otherwise restricts, its application. No provisions in law restrict or prohibit an exemption to the requirements concerning written examinations and operating tests; the ''endanger'' and ''public interest'' factors are addressed in the next sections in this notice.

The regulations in 10 CFR part 55 implement Section 107 of the Atomic Energy Act of 1954, as amended (AEA), which sets requirements upon the Commission concerning operators' licenses and states, in part, that the Commission shall ''prescribe uniform conditions for licensing individuals as operators of any of the various classes of . . . utilization facilities licensed'' by the NRC.

Preparing and evaluating operator examinations using the criteria in NUREG–1021 is a means of ensuring the equitable and consistent administration of operator licensing examinations for all applicants and thus helps to ensure uniform conditions exist for the operator licensing examinations administered as part of the licensing process. The 11 former VCSNS Unit 2 operator license applicants identified in Enclosure 2 of the letter dated April 16, 2019, took and passed an NRC written examination and operating test for VCSNS Unit 2, which was prepared and evaluated using the criteria in NUREG–1021. The initial NRC written exams and operating tests administered to applicants for VEGP Unit 3 were also prepared and evaluated using the criteria in NUREG–1021. Therefore,

these 11 applicants took and passed an NRC written examination and operating test that was of the same structure, scope, and format as those administered to the operator license applicants at VEGP Unit 3. Also, the same K/A catalog was used to develop the written exams and operating tests administered to operator license applicants at both VCSNS Unit 2 and VEGP Unit 3, and therefore written exams and operating tests administered at both sites included a representative sample of content-valid topics for the AP1000 design; the sample of K/As used to develop written exams and operating tests administered for VCSNS Unit 2 could also have been used to develop exams administered for VEGP Unit 3, and vice versa.

The staff considered whether any differences in the design and operation of the plant systems at VCSNS Unit 2 and VEGP Unit 3 would result in significant differences between the simulators used to administer the operating tests at VCSNS Unit 2 and VEGP Unit 3 at the time that the 11 applicants received pass letters. Because the AP1000 is designed to be a standard plant, VCSNS Unit 2 and VEGP Unit 3 were similar in their design and operation. As discussed in Enclosure 1, Section 4.0, of the letter dated December 20, 2018, the staff approved the simulators at VEGP Unit 3 and VCSNS Unit 2 as Commission-approved simulation facilities as discussed in two safety evaluations (ADAMS Accession Nos. ML16070A301 and ML16203A116, respectively). In those safety evaluations, the staff concluded that the VCSNS Unit 2 simulation facility and the VEGP Unit 3 simulation facility each demonstrated sufficient scope and fidelity with the AP1000 reference plant design control document (DCD) to support approval of the simulation facilities at both sites for the equitable and consistent administration of operator licensing examinations. The plant combined licenses for VCSNS Unit 2 (ADAMS Accession No. ML14100A092) and VEGP Unit 3 (ADAMS Accession No. ML14100A106) state that the COL applications for both sites incorporate by reference appendix D to 10 CFR part 52, which approves Revision 19 of the AP1000 DCD (ADAMS Package Accession No. ML11171A500) (*i.e.,* the reference plant DCD). The safety evaluations also state that the staff determined that the simulation facilities for both VEGP Unit 3 and VCSNS Unit 2 model the AP1000 plant systems and also contains the alarms, indications, and controls needed to operate the AP1000 plant systems. Thus, the staff concludes that the simulation facilities used to administer the operating tests to the 11 former VCSNS Unit 2 applicants and the VEGP Unit 3 applicants each sufficiently modeled the AP1000 plant systems, alarms, indications, and controls.

In Enclosure 1, Section 2.0, ''Detailed Description,'' of the letter dated December 20, 2018, SNC explained that the operator training programs for VCSNS Unit 2 and VEGP Unit 3 were similar and stated, ''The AP1000 is designed to be a standard plant. VCSNS Unit 2 and VEGP Unit 3 are of similar age and power level, and share the same vendor and similar design. Training material (*e.g.,* lesson plans, simulator scenarios, operating procedures) for operators at VCSNS Unit 2 and VEGP Unit 3 was created jointly by SNC and SCE&G using common procedures and references provided to the utilities by Westinghouse.'' SNC also stated in Enclosure 1, Section 4.0, ''Technical Justification of Acceptability,'' of the letter dated December 20, 2018, ''Examinations and tests were developed to assess the knowledge, skills, and abilities needed by operators to perform assigned tasks common to both VCSNS Unit 2 and VEGP Unit 3.'' Also, in Enclosure 1, Section 4.0 of the letter dated December 20, 2018 and in the letter dated March 4, 2019, SNC explained that VEGP Unit 3 instructors who are certified as senior operators and former VCSNS Unit 2 senior operator candidates conducted a line-by-line comparison of the operator and senior operator task lists for both sites. SNC found that all the VEGP Unit 3 tasks were included on the VCSNS Unit 2 task list. Thus, the 11 former VCSNS Unit 2 operator license applicants were trained to perform the same tasks as the operator license applicants at VEGP Unit 3 during the training they received prior to taking the NRC written examination and operating test. However, SNC also explained that some procedures cited in the task statements on the task lists for VCSNS Unit 2 were different than the procedures cited in the task lists for VEGP Unit 3. Testable differences (*i.e.,* those tasks with K/As rated 2.5 or more in the K/A catalog) were limited to site-specific emergency planning and ''conduct of operations'' procedures, which include topics related to plant control, configuration management, and administration of duties onsite. Specifically, at a public meeting on December 6, 2018 (ADAMS Accession No. ML18340A087), SNC listed each of the VEGP Unit 3 procedures that were included in the training provided to the 11 applicants.

Because the site-specific emergency planning and conduct of operations procedures were different at each site, the 11 former VCSNS Unit 2 operator license applicants may have been trained to perform tasks necessary to implement the emergency plan and tasks discussed in the conduct of operations procedures differently than the VEGP Unit 3 applicants. Also, because there are K/As related to emergency plan implementing procedures (EPIPs) and conduct of operations topics in Section 2 of NUREG–2103, the written examination questions and administrative JPMs developed from those K/As may have tested knowledge, skills, and abilities necessary to perform tasks at VCSNS Unit 2 not relevant to VEGP Unit 3.

Therefore, the staff concludes that the portions of the written exams and operating tests administered at VCSNS Unit 2 that did not include K/As from Section 2 of NUREG–2103 related to the site-specific emergency plan implementing procedures and conduct of operations topics are also relevant to the design and operation of VEGP Unit 3. Thus, for those portions of the exams unrelated to site-specific emergency plan implementing procedures and conduct of operations topics, the 11 individuals have taken and passed a written examination and operating test that demonstrates that they have learned to operate VEGP Unit 3, similar to the VEGP Unit 3 operator license applicants who have passed a written examination and operating test.

As discussed in the next section in this notice, SNC provided training to the 11 individuals on the VEGP Unit 3 emergency planning and conduct of operations procedures and administered exams that the staff has determined are sufficient to evaluate the 11 applicants' competency on these topics. Thus, the staff concludes that these 11 applicants demonstrated that they have learned to implement the VEGP Unit 3 emergency plan procedures and the conduct of operations in a manner similar to how the VEGP Unit 3 operator license applicants did on the NRC written examination and operating test.

For the reasons explained in this notice, the staff concludes that, like the VEGP Unit 3 applicants who have passed an NRC written examination and operating test, the 11 former VCSNS Unit 2 operator license applicants demonstrated that they have learned to perform the duties of an operator or senior operator at VEGP Unit 3 by passing an NRC written examination and operating test at VCSNS Unit 2 and the additional test(s) administered by SNC specifically to address site-specific differences in the emergency plan and conduct of operations procedures.

Considering the extent to which the knowledge and abilities associated with the operation of VEGP Unit 3 of the 11 former VCSNS Unit 2 applicants have been assessed consistent with the manner in which VEGP Unit 3 applicants were assessed, the staff concludes that uniformity and consistency under the exemption will be maintained, and granting of the exemption will not alter the basis for the staff's licensing decisions. Accordingly, the staff has determined that granting of the facility licensee's proposed exemption will not result in a violation of the AEA, or the Commission's regulations. Therefore, the exemption is authorized by law.

*2. The Exemption Will Not Endanger Life or Property*

As stated, in part, in 10 CFR 55.33(a)(2), the Commission will approve an initial application for a license if it finds that the applicant has passed the requisite written examination and operating test in accordance with 10 CFR 55.41 and 55.45 or 55.43 and 55.45. These examinations and tests determine whether the applicant for an operator's license has learned to operate a facility competently and safely, and additionally, in the case of a senior operator, whether the applicant has learned to direct the licensed activities of licensed operators competently and safely. Competent and safe operators protect against endangerment of life or property. Accordingly, where the examination adequately determines who is competent, those exams are protective of and do not endanger life or property.

As discussed in the section in this notice, the 11 former VCSNS Unit 2 operator license applicants took and passed an NRC written examination and operating test at VCSNS Unit 2 that tested K/As that are also relevant to the design and operation of VEGP Unit 3, with two exceptions: Written examination questions and administrative JPMs developed from K/As in Section 2 of NUREG–2103 that are related to site-specific emergency plan implementing procedures and conduct of operations procedures may have tested information that is not relevant to VEGP Unit 3 due to differences in those procedures at the two sites. The portions of the VCSNS Unit 2 exams that tested K/As related to the EPIPs and conduct of operations procedures are not necessarily relevant to VEGP Unit 3 because the VCSNS Unit 2 procedures were different than those at VEGP Unit 3. Thus, the staff cannot rely on the previous VCSNS Unit 2 written examination and operating test results to conclude that the 11 applicants have demonstrated competency in the VEGP Unit 3 EPIPs and conduct of operations.

However, SNC provided training to the 11 applicants on the VEGP Unit 3 EPIPs and conduct of operations procedures. In Enclosure 1, Section 4.0, of the December 20, 2018, letter, SNC stated that it trained the 11 applicants on the VEGP Unit 3 EPIPs using the same training material that was provided to the VEGP Unit 3 operator license applicants. These 11 applicants also completed self-study of the VEGP Unit 3 conduct of operations procedures; VEGP Unit 3 training instructors were available to assist and answer questions as necessary. Furthermore, in Enclosure 1, Section 4.0, of the December 20, 2018, letter, SNC stated that the 11 former VCSNS Unit 2 operator license applicants and all VEGP Unit 3 applicants who have passed NRC written exams and operating tests have been enrolled in a continuing training program at VEGP Unit 3. The continuing training program uses a systematic approach to training to ensure the applicants maintain proficiency, and it is accredited by the National Academy for Nuclear Training.[1] As discussed in Enclosure 1, Section 2.0, and Section 4.0, of the December 20, 2018, letter, the continuing training program curriculum includes training on design and procedure changes as well as on the site-specific aspects of VEGP Unit 3 plant systems.

Additionally, in Enclosure 1, Section 4.0, of the December 20, 2018, letter, SNC stated that it also administered examinations on the VEGP Unit 3 EPIPs and the conduct of operations procedures to the 11 applicants, and each of the 11 applicants passed these examinations. In the March 4, 2019, letter, SNC stated that the minimum passing score for these examinations was 80 percent, which is the minimum passing score, or cut score, used on NRC examinations. In the March 4, 2019, letter, SNC also listed the methods it took to establish examination security such that the applicants did not have knowledge of the examination content prior to taking SNC's examinations. These measures included controlling access to the exam content, counting copies of the examinations, informing applicants and instructors not to discuss examination content, and requiring the applicants to sign an examination integrity statement. The staff concludes these methods are consistent with the physical security guidelines for examination integrity in NUREG–1021, ES–201, Attachment 1, ''Exam Security and Integrity Considerations,'' which were established to prevent the applicants from having prior knowledge of the content on NRC examinations.

In Enclosure 1 of the April 16, 2019, letter, SNC explained how the examinations it administered to these 11 applicants were comparable to the JPMs and written examination questions they would have otherwise taken on an NRC examination at VEGP Unit 3.

The exams that SNC administered to the 11 former VCSNS Unit 2 operator license applicants on the VEGP Unit 3 EPIPs and the conduct of operations procedures, immediately following the gap training, included both JPMs and written test questions. The examinations consisted of a 25-question written exam and a 5-part JPM exam. The written exam questions met the standards in NUREG–1021, Appendix B, and the JPM questions met the standards in NUREG–1021, Appendix C. All written test questions and JPMs were based on and linked to K/A items selected from NUREG–2103. The importance rating of each K/A item was equal to or greater than 2.5. The examinations were based on closing the gaps which were identified during the Systematic Approach to Training based gap analysis. The K/As selected for the examinations that SNC administered sampled from all the K/As that SNC identified as testable differences. K/As from the following sections of NUREG–2103 were sampled: 2.1 Conduct of operations, 2.2 Equipment Control, 2.3 Radiation Control, and 2.4 Emergency Procedures and Emergency Plan. Subsequently, five additional JPMs were administered to the 11 applicants listed in the exemption request. The supplementary JPMs tested the candidates' knowledge of the conduct of operations procedures. These JPM questions were linked to K/As, from Sections 2.1, 2.2, and 2.3 of NUREG–2103, having an importance rating of 2.5 or higher. The questions met the standards in NUREG–1021, Appendix C and were written and administered by trained and experienced instructors. The scores of the supplementary JPMs were combined with the scores of the initial JPMs to provide an overall grade for the JPM exam.

Because conduct of operations topics are tested on the NRC initial examination using written examination

[1] As discussed in NUREG–1021, ES–202, a facility licensee's training program is considered to be approved by the NRC when it is accredited by the National Nuclear Accrediting Board (NNAB). The National Academy for Nuclear Training operates under the auspices of the Institute of Nuclear Power Operations (INPO). It integrates the training efforts of all U.S. nuclear utilities, the activities of the NNAB, and the training-related activities of INPO.

questions and JPMs sampled from K/As in Sections 2.1, 2.2, and 2.3 of the K/A catalog, and because the written examination questions and JPMs that SNC developed used the same standards in NUREG–2103, Appendices B and C that are used for NRC initial examinations, the staff concludes that SNC tested the 11 applicants on their knowledge of the VEGP Unit 3 conduct of operations procedures using the same evaluation methods, standards, and passing criteria that is used for the NRC initial examinations. Thus, the written examination questions and JPMs the applicants took and passed on the VEGP Unit 3 conduct of operations procedures were comparable to those they would otherwise take on an NRC examination administered at VEGP Unit 3. Therefore, the staff concludes that SNC sufficiently evaluated the 11 applicants' knowledge of and competency applying the VEGP Unit 3 conduct of operations procedures.

Also, EPIPs are topics tested on the NRC initial examination using written examination questions and JPMs sampled from K/As in Section 2.4 of the K/A catalog. Although SNC did not administer written examination questions to the 11 applicants to assess their knowledge of the VEGP Unit 3 EPIPs, SNC did administer more JPMs to the 11 applicants on the EPIP topics than they would have taken on an initial NRC examination at VEGP Unit 3. Because JPMs are task-based evaluation tools that require an applicant not only to demonstrate knowledge of a topic, but also to perform tasks necessary to implement the emergency plan, the staff concludes that JPMs are a sufficient tool to evaluate the applicants' knowledge of the how to implement the VEGP Unit 3 EPIPs following the completion of the VEGP Unit 3 EPIP training. Because the JPMs that SNC developed used the same standards in NUREG–2103, Appendix C, that are used for NRC initial examinations, the staff concludes that SNC tested the 11 applicants on their knowledge of the VEGP Unit 3 EPIPs using the same standards and passing criteria that is used for the NRC initial examinations.

For those differences in plant systems that were not identified to be ''testable'' in accordance with the licensee's assessment of those K/A's with importance ratings greater than 2.5, the facility licensee will still be required to ensure that the applicants are effectively trained and evaluated in accordance with the facility licensee's Commission approved SAT-based training program. The facility licensee has not requested an exemption of 10 CFR 55.31(a)(4), which states:

> Provide evidence that the applicant has successfully completed the facility licensee's requirements to be licensed as an operator or senior operator and of the facility licensee's need for an operator or a senior operator to perform assigned duties. An authorized representative of the facility licensee shall certify this evidence on Form NRC–398, ''Personal Qualification Statement—Licensee.'' This certification must include details of the applicant's qualifications, and details on courses of instruction administered by the facility licensee, and describe the nature of the training received at the facility, and the startup and shutdown experience received. In lieu of these details, the Commission may accept certification that the applicant has successfully completed a Commission-approved training program that is based on a systems approach to training and that uses a simulation facility acceptable to the Commission under 10 CFR 55.45(b) of this part.

Therefore, when applying for operator licenses, the facility licensee will need to certify that the applicants have completed the facility's training program in its entirety, which would include training on differences in the design and operation of plant systems between the two facilities and any testing/evaluation inherent to the training program. This approach is similar to the historical NRC approach used when adding a second unit to an operator's license at a plant with two comparable units with limited system differences, as discussed in NUREG–1021, Section ES–204. Through this action, the NRC is exempting only the requirement to pass another NRC-approved examination based on the licensee's certification that the applicants have been re-evaluated on any test items from the VCSNS Unit 2 examination that were not applicable to VEGP Unit 3. SNC will need to certify at a later date when it submits the final operator license applications (*i.e.,* NRC Form 398) that the applicants have been adequately trained and evaluated in accordance with the VEGP Unit 3 training program.

Because the only testable differences were related to EPIPs and conduct of operations, the staff concludes the written examinations and operating tests administered to the 11 applicants at VCSNS Unit 2 were equivalent or comparable to those administered to the VEGP Unit 3 applicants for all other testable subjects. Because SNC administered an examination that was comparable in scope and administration of the NRC examination, staff concludes that SNC provided an adequate mechanism to determine whether the 11 applicants demonstrated competency of the VEGP Unit 3 EPIPs and conduct of operations procedures in lieu of having the 11 applicants retake any or all portions of the NRC initial written examination and operating test at VEGP Unit 3. Therefore, the VCSNS Unit 2 examination results plus the results of the examination SNC administered together demonstrate that these applicants have demonstrated that they are competent to operate VEGP Unit 3, and therefore, granting the exemption will not endanger life or property.

*3. The Exemption Is Otherwise in the Public Interest*

The Commission's values guide the NRC in maintaining certain principles as it carries out regulatory activities in furtherance of its safety and security mission. These principles focus the NRC on ensuring safety and security while appropriately considering the interests of the NRC's stakeholders, including the public and licensees. These principles include Independence, Openness, Efficiency, Clarity, and Reliability. Whether granting an exemption to the requirement to pass a written examination and operating test at VEGP Unit 3 would be in the public interest depends on the consideration and balancing of the foregoing factors.

Concerning efficiency, the public has an interest in the best possible management and administration of regulatory activities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources—which, in turn, minimizes the costs passed on to the public—should be considered acceptable. The 11 applicants each passed a written examination and operating test at VCSNS Unit 2 that was of the same format and scope and that was also similar, to a large degree, in content to the examinations given to the VEGP Unit 3 applicants. As discussed in this notice, where there were differences that may have been present in the examination content related to EPIPs and conduct of operations procedures, SNC implemented sufficient methods to address the significant differences between the two sites.

In Enclosure 1, Section 5.3, of the December 20, 2018, letter, SNC explained that if the exemption is granted, then training resources will be available to meet other site training needs and to ensure trained operations personnel are available to support activities at VEGP Unit 3, including fuel load. The staff will not have to devote resources to preparing and validating additional written examinations and operating tests for these 11 applicants. Also, these 11 applicants will be able to remain in the continuing training

program for VEGP Unit 3, which will help to ensure they maintain proficiency in topics included in the initial training program and that they also receive training on any changes made to the plant design or procedures prior to fuel load and plant operation. Therefore, granting the exemption and transferring the pass letters from VCSNS Unit 2 to VEGP Unit 3 is an effective and efficient alternative to requiring the 11 applicants to take a written examination and operating test to be licensed at VEGP Unit 3.

Concerning reliability, once established, regulations should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes. Here, where the staff has already found that the examinations administered at VCSNS Unit 2 together with the actions SNC has taken to ensure the 11 applicants demonstrated competency to implement the VEGP Unit 3 EPIPs and conduct of operations procedures are sufficient to conclude that the 11 applicants have learned to operate VEGP Unit 3 safely and competently, the substantive requirements upon the operator license applicant are unchanged with the granting of the exemption. Further, the public has an interest in reliability in terms of the stability of the nuclear planning process. This exemption aids planning by allowing the 11 applicants to complete their applications sooner, with the underlying requirements essentially unchanged, and could result in licensing decisions being made earlier than would be possible if the applicants had to wait to take a written examination and operating test at VEGP Unit 3.

Concerning clarity, there should be a clear nexus between regulations and agency goals and objectives whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied. For the reasons explained herein, the examination results from the examinations administered at VCSNS Unit 2 together with the compensatory actions taken by SNC to address knowledge gaps related to EPIPs and conduct of operations procedures are sufficient to conclude that these 11 applicants have learned to operate VEGP Unit 3 safely and competently, and therefore the underlying requirements of 10 CFR 55.33(a)(2) are met, and the requirements in 10 CFR 55.31(a)(3) are not necessary.

The exemption is also consistent with the principles of Independence and Openness; the Commission has independently and objectively considered the regulatory interests involved and has explicitly documented its reasons for issuing the exemption.

Accordingly, on balance the Commission concludes that the exemption is in the public interest.

Summary

The Commission concludes that the exemption is (1) authorized by law and (2) will not endanger life or property and (3) is otherwise in the public interest. Therefore, in lieu of the requirements of 10 CFR 55.33(a)(2), the Commission will transfer the pass letters for the 11 applicants listed in Enclosure 2 of the letter dated April 16, 2019, to VEGP Unit 3, and the requirement in 55.31(a)(3) is therefore not necessary for these 11 applicants.

Limitation

The granting of this exemption is limited to the 11 applicants identified by docket number in Enclosure 2 of the April 16, 2019 letter.

Environmental Consideration

This exemption allows the exemption from the requirements of 10 CFR 55.31(a)(3) and 55.33(a)(2), and allows 11 VCSNS Unit 2 operator license applicants to transfer their pass letters for VCSNS Unit 2 to VEGP Unit 3. The staff evaluated whether there would be significant environmental impacts associated with the issuance of the requested exemption. The staff determined the proposed action fits a category of actions that do not require an environmental assessment or environmental impact statement.

For the following reasons, this exemption meets the eligibility criteria of 10 CFR 51.22(c)(25) for a categorical exclusion. The exemption does not make any changes to the facility or operating procedures and does not:

- Alter the design, function or operation of any plant equipment. Therefore, granting this exemption would not increase the probability or consequence of any previously evaluated accident.
- Create any new accident initiators. Therefore, granting this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.
- Exceed or alter a design basis or safety limit. Therefore, granting this exemption does not involve a significant reduction in a margin of safety.

Therefore, there is no significant hazards consideration related to this exemption. The staff has also determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no significant construction impact; and that there is no significant increase in the potential for or consequences from radiological accidents. Finally, the requirements to which the exemption applies involve qualification requirements. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the exemption.

## IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, issuing this exemption from the requirements in 10 CFR 55.33(a)(2) and 10 CFR 55.31(a)(3) is authorized by law and will not endanger life or property and is otherwise in the public interest.

The Commission will also transfer the pass letters from VCSNS Unit 2 to VEGP Unit 3 for the 11 former VCSNS Unit 2 operator license applicants.

Dated at Rockville, Maryland, this 31st day of May 2019.

For the Nuclear Regulatory Commission.

**Anna H. Bradford,**

*Deputy Director, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.*

[FR Doc. 2019–11688 Filed 6–4–19; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–608; NRC–2019–0029]**

## In the Matter of SHINE Medical Technologies, Inc.; SHINE Medical Isotope Production Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Indirect transfer of license; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the indirect transfer of Construction Permit No. CPMIF–001 for the SHINE Medical Isotope Production Facility, resulting from the establishment of a holding company, Illuminated Holdings, Inc. The NRC is also issuing an administrative

conforming amendment to the license to reflect the transfer.

**DATES:** The Order was issued on May 20, 2019, and is effective for one year.

**ADDRESSES:** Please refer to Docket ID NRC–2019–0029 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–2019–0029. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; e-mail: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS under Accession Nos. ML19102A324, ML19102A326, and ML19102A322, respectively.
- *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:** Steven T. Lynch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301–415–1524, e-mail: *Steven.Lynch@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated at Rockville, Maryland, this 30th day of May 2019.

For the Nuclear Regulatory Commission.

**Steven T. Lynch,**

*Project Manager, Research and Test Reactors Licensing Branch, Division of Licensing Projects, Office of Nuclear Reactor Regulation.*

**Attachment—Order Approving the Transfer of License and Conforming Amendment**

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-608; Construction Permit No. CPMIF-001]

In the Matter of SHINE Medical Technologies, Inc.

ORDER APPROVING THE INDIRECT TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

SHINE Medical Technologies, Inc. (SHINE) is the holder of Construction Permit No. CPMIF-001, which authorizes construction of the SHINE Medical Isotope Production Facility. SHINE has proposed to construct and operate a facility in Janesville, Wisconsin for the production of molybdenum-99 (Mo-99) through the irradiation and processing of a uranyl sulfate solution. The proposed facility would comprise an irradiation facility and radioisotope production facility. The irradiation facility would consist of eight subcritical operating assemblies (or irradiation units), which would each be licensed as a utilization facility, as defined in title 10 of the *Code of Federal Regulations* (10 CFR) § 50.2, ''Definitions.'' The radioisotope production facility would consist of three hot cell structures, licensed collectively as a production facility, as defined in 10 CFR § 50.2. The irradiation facility and radioisotope production facility are collectively referred to as the SHINE Medical Isotope Production Facility.

II.

By application dated December 11, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18347A215), as supplemented by letter dated March 8, 2019 (ADAMS Accession No. ML19071A055), SHINE requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of Construction Permit No. CPMIF-001 for the SHINE Medical Isotope Production Facility, currently held by SHINE. The indirect transfer would result from the establishment of a holding company, Illuminated Holdings, Inc. (Illuminated). The indirect transfer request was submitted to the NRC for approval pursuant to Section 184, ''Inalienability of Licenses,'' of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR § 50.80, ''Transfer of licenses.''

SHINE also requested, pursuant to 10 CFR § 50.90, ''Application for amendment of license, construction permit, or early site permit,'' the issuance of an administrative conforming amendment to the license to reflect the proposed transfer. Specifically, the amendment would revise SHINE's construction permit to reflect SHINE's new name, SHINE Medical Technologies, LLC (SHINE LLC), resulting from its conversion from a corporation into a single-member limited liability company, owned and controlled by Illuminated.

Notice of NRC consideration of the indirect license transfer application was published in the **Federal Register** (FR) on February 20, 2019 (84 FR 5116), and included an opportunity to comment, request a hearing, and petition for leave to intervene. No comments or hearing requests were received.

Pursuant to 10 CFR § 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, as supplemented, and other information before the Commission, and relying upon the representations and agreements contained in the application, as supplemented, the NRC staff has determined that SHINE LLC would be qualified to be the holder of Construction Permit No. CPMIF-001, and that the indirect transfer of the license, as described in the application, as supplemented, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Upon review of the application for a conforming amendment to Construction Permit No. CPMIF-001 to reflect the indirect transfer of the license, the NRC staff determined the following:

(1) The application for the proposed license amendment complies with the standards and requirements of the AEA, and the Commission's rules and regulations set forth in 10 CFR Chapter I, ''Nuclear Regulatory Commission.''

(2) The facility will be constructed in conformity with the application, as supplemented, the provisions of the

Act, and the rules and regulations of the Commission.

(3) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.

(4) The issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public.

(5) The issuance of the proposed license amendment is in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' of the Commission's regulations, and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated May 20, 2019.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the AEA, Title 42 of the United States Code Sections 2201(b), 2201(i), and 2234; and 10 CFR § 50.80, IT IS HEREBY ORDERED that the application for the indirect transfer of the license, as described herein, is approved for the SHINE Medical Isotope Production Facility.

IT IS FURTHER ORDERED that, consistent with 10 CFR § 2.1315, ''Generic determination regarding license amendments to reflect transfers,'' paragraph (b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject indirect license transfer is approved. The amendment shall be issued and made effective at the time the proposed indirect license transfer is completed.

IT IS FURTHER ORDERED that SHINE shall, at least 2 business days prior to closing, inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the indirect license transfer for the SHINE Medical Isotope Production Facility. Should the proposed transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated December 11, 2018, as supplemented by letter dated March 8, 2019, and the associated NRC safety evaluation dated May 20, 2019, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who encounter problems with ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 20th day of May 2019.

For the Nuclear Regulatory Commission.

Tamara E. Bloomer,

*Acting Deputy Director, Division of Licensing Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 2019–11660 Filed 6–4–19; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0229]**

## Information Collection: Export and Import of Nuclear Equipment and Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Export and Import of Nuclear Equipment and Material.''

**DATES:** Submit comments by July 5, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0036), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2018–0229 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0229.
- *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 supporting statement and NRC Forms 830, 830A, 831, 831A, are available in ADAMS under Accession Nos. ML19114A414, ML19127A354, ML19127A360, ML19127A378, and ML19127A381.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

*B. Submitting Comments*

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment

submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Export and Import of Nuclear Equipment and Material.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on January 31, 2019 (84 FR 820).

1. *The title of the information collection:* 10 CFR part 110, ''Export and Import of Nuclear Equipment and Material.''

2. *OMB approval number:* 3150–0036.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 830, NRC Form 830A, NRC Form 831, and NRC Form 831A.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any person in the United States who wishes to export or import (a) nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license; (d) obtain consent to export Category 1 quantities of materials listed in Appendix P to 10 CFR part 110; or (e) request an exemption from a licensing requirement under 10 CFR part 110.

7. *The estimated number of annual responses:* 3,170.

8. *The estimated number of annual respondents:* 88.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1,493.

10. *Abstract:* Persons in the United States who export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under 10 CFR part 110.

Dated at Rockville, Maryland, this 30th day of May 2019.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2019–11637 Filed 6–4–19; 8:45 am]

BILLING CODE 7590–01–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, June 12, 2019 3 p.m. (OPEN).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW, Washington, DC.

**STATUS:** Meeting OPEN to the Public.

**MATTERS TO BE CONSIDERED:**

1. Approval—Bylaws of the Corporation
2. Approval—Corporate Secretary
3. Approval—Charter of the Risk Committee of the Board
4. Approval—Charter of the Audit Committee of the Board
5. Approval—Delegation of Authority of the Board

The Better Utilization of Investments Leading to Development (BUILD) Act of 2018, Public Law 115–254 creates the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Section 1465(a) of the Act tasks OPIC staff with assisting DFC in the transition. Section 1466(a)–(b) provides that all completed administrative actions and all pending proceedings shall continue through the transition to the DFC. Accordingly, OPIC is issuing this Sunshine Act Meeting notice and on behalf of the DFC.

**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: June 1, 2019.

**Catherine Andrade,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 2019–11842 Filed 6–3–19; 11:15 am]

BILLING CODE 3210–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### 30-Day Notice of Proposed Information Collection: Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice; reopening of comment period.

**SUMMARY:** The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0272, Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on March 12, 2019 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** OPM is reopening the comment period for the notice published on March 12, 2019 (84 FR 8916). Comments are encouraged and will be accepted until July 5, 2019. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Julia Elam, Office of Personnel Management, 1600 E St. NW, Rm. 4316–AL, Washington, DC 20415 Attention: Julia Elam or send via electronic mail to *FEDVIP@opm.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Employees Dental and Vision Insurance Program Enrollment System uses BENEFEDS, which is the secure enrollment website sponsored by OPM that allows eligible individuals to enroll or change enrollment in a FEDVIP plan. Eligible individuals use the system to enroll or change enrollment during the annual Open Season or when

experiencing a qualifying life event under 5 CFR 894.101. Federal Civilian and U.S. Postal Service (USPS) employees, retirees (annuitants), survivor annuitants, compensationers, and their eligible family members can enroll and be enrolled in FEDVIP. In addition, most uniformed services retirees and their families became eligible to enroll in dental and vision insurance and most uniformed services active duty family members became eligible to enroll in vision insurance under FEDVIP during the 2018 Open Season for coverage effective January 1, 2019. OPM uses this enrollment system to carry out its responsibility to administer the FEDVIP in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894) but has been doing so without an OMB control number.

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) OPM is soliciting comments for this collection (OMB No. 3206–0272). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

*Agency:* Office of Personnel Management.

*Title:* Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System.

*OMB Number:* 3206–0272.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 332,304.

*Estimated Time per Respondent:* 8 minutes.

*Total Burden Hours:* 44,307 hours.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2019–11681 Filed 6–3–19; 4:15 pm]

**BILLING CODE 6325–64–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–85966; File No. SR–CboeBZX–2019–023]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 14.11(c) (Index Fund Shares) To Adopt Generic Listing Standards for Index Fund Shares Based on an Index of Municipal Securities

May 30, 2019.

On April 3, 2019, Cboe BZX Exchange, Inc. (''Cboe BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Cboe BZX Rule 14.11(c) to adopt generic listing standards for Index Fund Shares based on an index of municipal securities. The proposed rule change was published for comment in the **Federal Register** on April 22, 2019.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 6, 2019. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 21, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2019–023).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–11643 Filed 6–4–19; 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. 85656 (Apr. 16, 2019), 84 FR 16753.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

## Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee will hold a public telephonic meeting on Tuesday, June 11, 2019 at 1:00 p.m.

**PLACE:** The meeting will be open to the public by telephone at 1–800–260–0718, participant code 467607 as well as by an audio-only webcast on the Commission's website at *www.sec.gov.*

**STATUS:** The meeting will begin at 1:00 p.m. and will be open to the public by telephone and an audio-only webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:** On May 20, 2019, the Commission published notice of the Committee meeting (Release No. 34–85895), indicating that the meeting is open to the public, by telephone or an audio-only webcast, and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include the consideration of recommendations from the Technology and Electronic Trading Subcommittee.

**CONTACT PERSON FOR MORE INFORMATION:** For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 3, 2019.

**Vanessa A. Countryman,**

*Acting Secretary.*

[FR Doc. 2019–11934 Filed 6–3–19; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33496]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May 2019. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 25, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

**FOR FURTHER INFORMATION CONTACT:** Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

### BlackRock California Municipal 2018 Term Trust [File No. 811–10499]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2018 and December 28, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $42,818.98 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $80,960.66 for the purpose of paying certain outstanding liabilities.

*Filing Dates:* The application was filed on January 14, 2019, and amended on May 14, 2019.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, Delaware 19809.

### BlackRock Municipal 2018 Term Trust [File No. 811–10501]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2018 and December 28, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $81,295.48 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $126,596.82 for the purpose of paying certain outstanding liabilities.

*Filing Dates:* The application was filed on January 14, 2019, and amended on May 14, 2019.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, Delaware 19809.

### BlackRock New York Municipal 2018 Term Trust [File No. 811–10503]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2018 and December 28, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $31,765.48 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $59,706.17 for the purpose of paying certain outstanding liabilities.

*Filing Dates:* The application was filed on January 14, 2019, and amended on May 14, 2019.

*Applicant's Address:* 100 Bellevue Parkway, Wilmington, Delaware 19809.

### CC Real Estate Income Fund-T2 [File No. 811–23405]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Dates:* The application was filed on March 11, 2019, and amended on April 24, 2019.

*Applicant's Address:* 590 Madison Avenue, 34th Floor, New York, New York 10022.

### Excelsior Venture Partners III LLC [File No. 811–22386]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 26, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $40,715 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $163,890 for the purpose of paying certain shareholders unclaimed distribution amounts in connection with the liquidation.

*Filing Dates:* The application was filed March 15, 2019, and amended on May 2, 2019.

*Applicant's Address:* 325 North Saint Paul Street, 49th Floor, Dallas, Texas 75201.

### Legg Mason Funds Trust [File No. 811–23107]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 19, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $25,652 incurred in connection with the liquidation were paid by the applicant and the applicant's investment adviser (or affiliate thereof).

*Filing Dates:* The application was filed March 7, 2019, and amended on May 15, 2019.

*Applicant's Address:* 620 Eighth Avenue, 49th Floor, New York, New York 10018.

### Nuveen Credit Opportunities 2020 Target Term Fund [File No. 811–23194]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on May 2, 2019.

*Applicant's Address:* 333 West Wacker Drive, Chicago, Illinois 60606.

### Nuveen Credit Opportunities 2024 Target Term Fund [File No. 811–23193]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on May 2, 2019.

*Applicant's Address:* 333 West Wacker Drive, Chicago, Illinois 60606.

**Nuveen High Income December 2022 Target Term Fund [File No. 811–23073]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on May 2, 2019.

*Applicant's Address:* 333 West Wacker Drive, Chicago, Illinois 60606.

**Nuveen Municipal 2023 Target Term Fund [File No. 811–23104]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

*Filing Date:* The application was filed on May 2, 2019.

*Applicant's Address:* 333 West Wacker Drive, Chicago, Illinois 60606.

**Piedmont Investment Trust [File No. 811–21689]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $32,336 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Dates:* The application was filed on December 28, 2018, and amended on May 1, 2019.

*Applicant's Address:* Sheets Smith Wealth Management, Inc., 120 Club Oaks Court, Suite 200, Winston-Salem, North Carolina 27104.

**TD Asset Management USA Funds Inc. [File No. 811–09086]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 12, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $29,482 incurred in connection with the liquidation were paid by the applicant's investment adviser. Applicant also has retained $377,101.32 for the purpose of paying outstanding liabilities.

*Filing Date:* The application was filed on April 18, 2019.

*Applicant's Address:* c/o TD Asset Management USA Funds Inc., 399 Park Avenue, New York, New York 10022.

**T. Rowe Price Capital Appreciation & Income Fund, Inc. [File No. 811–23212]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 14, 2019, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $219,329.51 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on April 25, 2019.

*Applicant's Address:* 100 East Pratt Street, Baltimore, Maryland 21202.

**UTC North American Fund, Inc. [File No. 811–06194]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $45,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

*Filing Date:* The application was filed on April 25, 2019.

*Applicant's Address:* c/o U.S. Bancorp Fund Services, LLC, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: May 31, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–11742 Filed 6–4–19; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 10783]**

### Proposal To Extend Cultural Property Agreement Between the United States and El Salvador

**SUMMARY:** Proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador.*

**FOR FURTHER INFORMATION CONTACT:** Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov;* include ''El Salvador'' in the subject line.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

**Marie Therese Porter Royce,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs Department of State.*

[FR Doc. 2019–11678 Filed 6–4–19; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 10784]**

### Cultural Property Advisory Committee; Notice of Meeting

**ACTION:** Notice of a meeting.

**SUMMARY:** We are issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

**DATES:** July 23–24, 2019, 9:00 a.m. to 5:00 p.m. (EDT). The Cultural Property Advisory Committee will hold an open session on July 23, 2019, at 1:30 p.m. (EDT). It will last approximately one hour.

*Participation:* You may participate electronically by Zoom. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any request for reasonable accommodation not later than July 8, 2019, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov.* It may not be possible to accommodate requests made after that date.

*Comments:* The Committee will review your written comment if it is received by July 8, 2019, at 11:59 p.m. (EDT). You are not required to submit a written comment in order to make an oral comment in the open session.

**ADDRESSES:** The public will participate electronically by Zoom. The members will meet at the U.S. Department of State, Annex 5, 2200 C St. NW, Washington, DC.

*Written Comments:* You may submit written comments in two ways,

depending on whether they contain privileged or confidential information:

▪ *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket [DOS–2019–0012] and follow the prompts to submit your comments.

▪ *Paper Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send submissions to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC 20522–0505.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning the meeting, contact Andrew Cohen, Bureau of Educational and Cultural Affairs—Cultural Heritage Center by phone, (202) 632–6301, or email: *culprop@state.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with § 306(e)(2) of the Convention on Cultural Property Implementation Act (5 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee''). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605.

*Meeting Agenda:* During the closed session the Committee will review the proposal to extend the cultural property agreement with El Salvador and Department of State staff will also brief the Committee on the threats to cultural property in Yemen. During the open session the Committee will hear public comments on El Salvador.

*Open Session Participation:* The Committee will hold an open session of the meeting to receive oral public comments on the El Salvador cultural property agreement on Tuesday, July 23, 2019, from 1:30 p.m. to approximately 2:30 p.m. (EDT). We have provided specific instructions on how to participate or observe the open session at *http://culturalheritage.state.gov.*

You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. But if you do wish to speak, you must request to be scheduled by July 17, 2019, via email (*culprop@state.gov*) in order to be assigned a slot. Please submit your name and organizational affiliation in this request. The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may provide additional oral comments for up to five (5) minutes per participant. Due to time constraints, it may not be possible to accommodate all who wish to speak.

*Written Comments:* If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the proposed extension for El Salvador using the *Regulations.gov* website (listed in the ''COMMENTS'' section above) not later than July 8, 2019, at 11:59 p.m. (EDT). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC 20522–0505. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). We request that any party soliciting or aggregating written comments received from other persons for submission to the Department inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed. Written comments submitted in electronic form are not private. We will post the comments at *http://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)).

**Marie Therese Porter Royce,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2019–11679 Filed 6–4–19; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2019–0020]**

### Agency Information Collection Activities: Notice of Request for Renewal of Two Previously Approved Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on March 27, 2019. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by July 5, 2019.

**ADDRESSES:** You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2019–0020.

**SUPPLEMENTARY INFORMATION:**

*Title 1:* A Guide to Reporting Highway Statistics.

*OMB Control Number:* 2125–0032.

*Abstract:* A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the

apportionment formula that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

*Respondents:* State and local governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands share this burden.

*Estimated Average Burden per Response:* The estimated average reporting burden per response for the annual collection and processing of the data is 754 hours for each of the States (including local governments), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands.

*Estimated Total Annual Burden:* The estimated total annual burden for all respondents is 42,206 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Dougherty, (202) 366–9234, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI–10), 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

*Title 2:* Highway Performance Monitoring System (HPMS).

*OMB Control Number:* 2125–0028.

*Abstract:* The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides mile and lane-mile components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA and has recently been updated to support the Transportation Performance Management (TPM) initiative.

*Respondents:* State governments of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

*Estimated Average Burden per Response:* The estimated average burden per response for the annual collection and processing of the HPMS data is 2,010 hours for each State, the District of Columbia, and the Commonwealth of Puerto Rico.

*Estimated Total Annual Burden:* The estimated total annual burden for all respondents is 104,520 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rozycki, (202) 366–5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

*Public Comments Invited:* You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, 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 these information collections.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued On: May 31, 2019.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2019–11716 Filed 6–4–19; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2019–0022]**

### Agency Information Collection Activities: Request for Comments on the Renewal of a Previously Approved Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by August 5, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket ID 2019–0022 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marthy Kenley, 202–366–8110, Office of Civil Rights, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Federal-Aid Highway Construction Equal Employment Opportunity.

*Background:* Title 23, Part 140(a), requires the FHWA to ensure equal opportunity regarding contractors' employment practices on Federal-aid highway projects. To carry out this requirement, the contractors must submit to the State Transportation Agencies (STAs) on all work being performed on Federal-aid contracts during the month of July, a report on its employment workforce data. This report provides the employment workforce data on these contracts and includes the number of minorities, women, and non-minorities in specific highway construction job categories. This information is reported on Form PR–1391, Federal-Aid Highway Construction Contractors Summary of Employment Data. The statute also requires the STAs to submit a report to the FHWA summarizing the data entered on the PR–1391 forms. This

summary data is provided on Form PR–1392, Federal-Aid Highway Construction Contractors Summary of Employment Data. The STAs and FHWA use this data to identify patterns and trends of employment in the highway construction industry, and to determine the adequacy and impact of the STA's and FHWA's contract compliance and on-the-job (OJT) training programs.

The STAs use this information to monitor the contractors-employment and training of minorities and women in the traditional highway construction crafts. Additionally, the data is used by FHWA to provide summarization, trend analyses to Congress, DOT, and FHWA officials as well as others who request information relating to the Federal-aid highway construction EEO program. The information is also used in making decisions regarding resource allocation; program emphasis; marketing and promotion activities; training; and compliance efforts.

*Respondents:* 11,077 annual respondents for form PR–1391, and 52 STAs annual respondents for Form PR–1392, total of 11,129.

*Frequency:* Annually.

*Estimated Average Burden per Response:* FHWA estimates it takes 30 minutes for Federal-aid contractors to complete and submit Form PR–1391 and 8 hours for STAs to complete and submit Form PR–1392.

*Estimated Total Amount Burden Hours: Form PR–1391*— 5,539 hours per year; *Form PR–1392*— 416 hours per year, total of 5,955 hours annually.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, 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 On: May 31, 2019.

**Michael Howell,**

*Information Collections Officer.*

[FR Doc. 2019–11768 Filed 6–4–19; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2019–0040]**

### Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 13, 2019, the City of Fargo, North Dakota (City), 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 222. FRA assigned the petition Docket Number FRA–2019–0040.

Specifically, the City seeks a waiver from the provisions of 49 CFR 222.35(b)(1) so that a new quiet zone consisting of two public highway-rail grade crossings (7th Avenue North & 16th Street North) may be established, without constant warning time (CWT) devices on one of the yard tracks. The City asserts that the 16th Street North crossing consists of two main line tracks and two yard tracks. The 16th Street crossing is equipped with flashing lights and gates, and CWT devices on the two main line tracks and the north yard track; however, the south yard track does not have CWT devices. The south yard track uses a battery relay, which will trigger the crossing active lights/gates when equipment is within limits of the crossing.

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 July 22, 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.

**John Karl Alexy,**

*Acting Associate Administrator, Office of Railroad Safety.*

[FR Doc. 2019–11634 Filed 6–4–19; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2015–0194]**

### Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on revision of a previously approved ICR.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Department of Transportation's (DOT) Office of the Secretary (OST) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and

approval and invites public comment. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Transportation (DOT) seeks a revision to a fast track generic clearance information collection request already approved by OMB. A 60-day notice was published on March 28, 2019. No comments were received. OST requests revision of ICR with OMB Control Number: 2105–0573 as described below.

**DATES:** Comments on this notice must be received by July 5, 2019.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Habib Azarsina, Office of the Chief Information Officer, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–1965 (Voice), 202–366–7870 (Fax), or *habib.azarsina@dot.gov* (Email).

**SUPPLEMENTARY INFORMATION:**

*Title:* Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Department's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, opinions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Department of Transportation and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback or information collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

The Department seeks a revision to a fast track generic clearance information collection request already approved by OMB. Existence of Fast Track option for conducting surveys has caused a sudden increase in number of surveys. OST has already used the 2,000 burden hours previously approved. OST requests increasing the total burden hours to 60,000.

The Department will submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Department (if released, the Department must indicate the qualitative nature of the information).

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

*Type of Review:* Revision of a previously approved ICR.

*Affected Public:* Individuals and households, businesses and organizations, State, Local or Tribal Governments.

*Estimated Number of Respondents:* 240,000.

*Estimated Annual Responses:* 80,000.

*Estimated Annual Burden Hours:* 20,000 hours.

*Frequency:* One-time requirement.

Annual burden hours = (80,000 responses) × (15 minutes) = 1,200,000 min. = 20,000 hours.

Total burden hours for 3 years = 20,000 × 3 = 60,000 hours.

Total respondents = 80,000 (each year) × 3 = 240,000.

Issued in Washington, DC.

**Habib Azarsina,**

*OST Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2019–11701 Filed 6–4–19; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Nonqualified Deferred Compensation and IRC Section 409A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning nonqualified deferred compensation and IRC section 409A.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111

Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Nonqualified Deferred Compensation and IRC Section 409A.

*OMB Number:* 1545–2164.

*Regulation Project Number:* TD 9321, Notices 2008–113, 2010–6, and 2010–80.

*Abstract:* Nonqualified deferred compensation plans subject to IRC Section 409A must comply with IRC Section 409A both in operation and in form. Failures to comply with these requirements will cause amounts deferred under the plan to be included in income and subject to the additional taxes under IRC Section 409A to the extent the amounts are not subject to a substantial risk of forfeiture and not previously included in income. In response to requests from taxpayers that a mechanism be created to allow them to correct operational failures and failures to comply with the plan document requirements without incurring all of the adverse tax consequences that would otherwise apply, the IRS and Treasury issued a series of notices providing for self-correction of certain operational and documentary failures.

The current guidance is Notice 2008–113, 2008–2 C.B. 1305 (operational failures), Notice 2010–6, 2010–3 I.R.B. 275 (document failures) and Notice 2010–80, 2010–51 I.R.B. 853 (modifying Notices 2008–113 and 2010–6). The notices specify the types of failures that may be corrected, the timeframes within which correction must be completed, the participants who are eligible for correction, what must be done to correct and the taxes (if any) that must be paid. Generally, the notices require the employer (and in many cases the employee) to attach a statement to their tax returns disclosing that a correction has occurred and to inform the revenue agent of the correction at the beginning of an examination.

*Current Actions:* There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households, Farms, and Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 20,000.

*Estimated Time per Respondent:* 30 mins.

*Estimated Total Annual Burden Hours:* 10,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11808 Filed 6–4–19; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Guidance Regarding Deduction and Capitalization of Expenditures

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning guidance regarding deduction and capitalization of expenditures.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Guidance Regarding Deduction and Capitalization of Expenditures.

*OMB Number:* 1545–1870.

*Regulation Project Number:* TD 9107.

*Abstract:* The information required to be retained by taxpayers will constitute enough documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

*Current Actions:* There is no change to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 3,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be

retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11770 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Source of Income From Certain Space and Ocean Activities; Source of Communications Income

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning source of income from certain space and ocean activities; source of communications income.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Source of Income from Certain Space and Ocean Activities; Source of Communications Income.

*OMB Number:* 1545–1718.

*Regulation Project Number:* TD 9305.

*Abstract:* TD 9305 contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

*Current Actions:* There is no change to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 250.

*Estimated Time per Respondent:* 5 hours.

*Estimated Total Annual Burden Hours:* 1,250.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11769 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 4506T–EZ and Form 4506T–EZ(SP)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 4506T–EZ, Short Form Request for Individual Tax Return Transcript, and 4506T–EZ(SP), Formulario Abreviado

para la Solicitud de un Trasunto de la Declaracion de Impuestos Personales.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclosure of returns and return information.

*OMB Number:* 1545–2154.

*Regulation Project Number:* 4506T–EZ and 4506T–EZ(SP).

*Abstract:* Individuals can use Form 4506T–EZ to request a tax return transcript that includes most lines of the original tax return. The tax return transcript will not show payments, penalty assessments, or adjustments made to the originally filed return. Form 4506T–EZ (SP) is the Spanish translated version of the Form 4507T–EZ. It is also used to request a tax return transcript that includes most lines of the original tax return.

*Current Actions:* There is no change to the burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households, Farms, and Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 1,100,000.

*Estimated Time per Respondent:* 47 mins.

*Estimated Total Annual Burden Hours:* 870,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11805 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule and Third-Party Network Transactions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning information reporting for debt instruments with original issue discount; contingent payments; anti-abuse rule.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Debt Instruments with OID; Contingent Payments; Anti-Abuse Rule.

*OMB Number:* 1545–1450.

*Regulation Project Number:* TD 8674.

*Abstract:* This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

*Current Actions:* There is no change to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and state, local, or tribal governments.

*Estimated Number of Respondents:* 180,000.

*Estimated Time per Respondent:* 29 minutes.

*Estimated Total Annual Burden Hours:* 89,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11766 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 8870

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning information reporting for Form 8870, Information Return for Transfers Associated With Certain Personal Benefit Contracts.

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return for Transfers Associated with Certain Personal Benefit Contracts.

*OMB Number:* 1545–1702.

*Regulation Project Number:* Form 8870.

*Abstract:* Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999, to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contact to which the premiums related; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 9, 1999, or certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

*Current Actions:* There is no change to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, Business or other for-profit groups.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 14 Hours 50 minutes.

*Estimated Total Annual Burden Hours:* 74,200.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11767 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Elections for Certain Transactions Under Section 336(e)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning elections for certain transactions under section 336(e).

**DATES:** Written comments should be received on or before August 5, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution

Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Elections for Certain Transactions Under Section 336(e).

*OMB Number:* 1545–2125.

*Regulation Project Number:* TD 9619.

*Abstract:* This collection contains final regulations that provide guidance under section 336(e) of the Internal Revenue Code (Code), which authorizes the issuance of regulations under which an election may be made to treat the sale, exchange, or distribution of at least 80 percent of the voting power and value of the stock of a corporation (target) as a sale of all its underlying assets. These regulations provide the terms and conditions for making such an election and the consequences of the election.

*Current Actions:* There is no change to the burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 1,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Desired Focus of Comments:* The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: May 30, 2019.

**R. Joseph Durbala,**

*IRS Tax Analyst.*

[FR Doc. 2019–11771 Filed 6–4–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### First Periodic Meeting of the U.S. Department of the Treasury Tribal Advisory Committee

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces that the U.S. Department of the Treasury Tribal Advisory Committee (TTAC) will convene for a public meeting on Thursday, June 20, 2019, from 9:00 a.m.–4:30 p.m. Eastern Time in the Cash Room of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. The meeting is open to the public, and the site is accessible to individuals with differing abilities.

**DATES:** The meeting will be held on Thursday, June 20, 2019, from 9:00 a.m.–4:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held in the Cash Room (Room 2121) at the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must register online or by telephone by 5:00 p.m. Eastern Time on Tuesday, June 11, 2019. Attendees with a valid email address may visit *http://www.cvent.com/d/p6qfw2* to complete a secure online registration form. All other attendees may contact Marie Vazquez Lopez at (202) 622–2049 to provide registration information.

If you require a reasonable accommodation, please contact Andre Faulk at *Andre.Faulk@treasury.gov* or 202–622–1278, or Lisa Jones at *lisa.jones@treasury.gov* or 202–622–0315. To request a sign language interpreter, please make your request five days prior to the event, if possible by contacting Andre Faulk or Lisa Jones. For all other inquiries concerning the TTAC meeting, please contact *Tribal.Consult@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy Montoya, Policy Analyst, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220, at (202) 622–2031 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 3 of the Tribal General Welfare Exclusion Act of 2014, Public Law 113–68, 128 Stat. 1883, enacted on September 26, 2014 (TGWEA), directs the Secretary of the Treasury (Secretary) to establish a seven member Tribal Advisory Committee to advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers.

Pursuant to Section 3 of the TGWEA and in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1 *et seq.,* the TTAC was established on February 10, 2015, as the ''U.S. Department of the Treasury Tribal Advisory Committee.'' The TTAC's Charter provides that it shall operate under the provisions of the FACA and shall advise and report to the Secretary on:

(1) Matters related to the taxation of Indians;

(2) The establishment of training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Indian tribes of Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian tribal governments; and

(3) The establishment of training of such internal revenue field agents, and provisions of training and technical assistance to tribal financial officers, about implementation of the TGWEA and any amendments.

#### First Periodic Meeting

In accordance with section 10(a)(2) of the FACA and implementing regulations

at 41 CFR 102–3.150, Krishna P. Vallabhaneni, the Designated Federal Officer of the TTAC, has ordered publication of this notice to inform the public that the TTAC will convene its first periodic meeting on Thursday, June 20, 2019, from 9:00 a.m.–4:30 p.m. Eastern Time in the Cash Room of the Treasury Building located at 1500 Pennsylvania Avenue NW, Washington, DC.

**Summary of Agenda and Topics To Be Discussed**

During this meeting, the seven members of the TTAC will be introduced and will appoint Co-Chairs, review the TTAC's Charter and mandate, and discuss various Federal income tax issues relating to Indians, such as Federal income tax issues relating to access to capital, Opportunity Zones, changes to the so-called ''kiddie tax'', and general welfare exclusion education of internal revenue field agents. In addition, the TTAC will identify other topics of interest for 2019 and take other actions necessary to fulfill the TTAC's mandate.

**Public Comment**

Members of the public wishing to comment on the business of the TTAC are invited to submit written statements by any of the following methods:

*Electronic Statements*

• Send electronic comments to *Tribal.Consult@treasury.gov.*

*Paper Statements*

• Send paper statements in triplicate to the Treasury Tribal Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 1426G, Washington, DC 20220.

The Department of the Treasury will post all statements on its website *https://www.treasury.gov/resource-center/economic-policy/tribal-policy/Pages/Tribal-Policy.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**Krishna P. Vallabhaneni,**

*Tax Legislative Counsel.*

[FR Doc. 2019–11714 Filed 6–4–19; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Government Securities: Call for Large Position Reports

**AGENCY:** Office of the Assistant Secretary for Financial Markets, Treasury.

**ACTION:** Notice of call for Large Position Reports.

**SUMMARY:** The U.S. Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose positions in the 2¼% Treasury Notes of April 2024 equaled or exceeded $4.1 billion as of Tuesday, April 30, 2019 and/or Friday, May 3, 2019.

**DATES:** Large Position Reports must be received by 5:00 p.m. Eastern Time on June 10, 2019.

**ADDRESSES:** The reports must be submitted to Treasury and may be faxed to Treasury at (202) 504–3788 or hand-delivered to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at 33 Liberty Street, 6th Floor, New York, NY.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena, Kurt Eidemiller, Kevin Hawkins, or John Garrison; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632.

**SUPPLEMENTARY INFORMATION:** In a public announcement issued on June 3, 2019, and in this **Federal Register** notice, Treasury called for Large Position Reports from entities whose positions in the 2¼% Treasury Notes of April 2024 equaled or exceeded $4.1 billion as of Tuesday, April 30, 2019 and/or Friday, May 3, 2019. Entities must submit separate reports for each reporting date on which their positions equaled or exceeded the $4.1 billion reporting threshold. Entities with positions in these notes below this reporting threshold are not required to submit Large Position Reports.

This call for Large Position Reports is pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420), promulgated pursuant to 15 U.S.C. 780–5(f). Reports must be received by Treasury before 5:00 p.m. Eastern Time on Monday, June 10, 2019, and must include the required position and administrative information. The reports may be faxed to Treasury at (202) 504–3788 or hand-delivered to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at 33 Liberty Street, 6th Floor.

The 2¼% Treasury Notes of April 2024, Series Y–2024, have a CUSIP number of 9128286R6, a STRIPS principal component CUSIP number of 912821BX2, and a maturity date of April 30, 2024.

The public announcement, a copy of a sample Large Position Report which appears in appendix B of the rules at 17 CFR part 420, and supplementary formula guidance are available at *www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

Non-media questions about Treasury's large position reporting rules and the submission of Large Position Reports should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632 or *govsecreg@fiscal.treasury.gov.*

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

**Brian Smith,**

*Deputy Assistant Secretary for Federal Finance.*

[FR Doc. 2019–11862 Filed 6–3–19; 4:15 pm]

**BILLING CODE 4810–AS–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 20, 2019 on ''A 'World-Class' Military: Assessing China's Global Military Ambitions.''

**DATES:** The hearing is scheduled for Thursday, June 20, 2019 at 9:30 a.m.

**ADDRESSES:** TBD, Washington, DC. A detailed agenda for the hearing will be posted on the Commission's website at *www.uscc.gov.* Also, please check the

Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

**FOR FURTHER INFORMATION CONTACT:** Any member of the public seeking further information concerning the hearing should contact Leslie Tisdale Reagan, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *lreagan@uscc.gov. Reservations are not required to attend the hearing.*

**SUPPLEMENTARY INFORMATION:**

*Background:* This is the sixth public hearing the Commission will hold during its 2019 report cycle. In his report to the 19th Congress of the Chinese Communist Party, General Secretary Xi Jinping declared that China would complete the modernization of its armed forces by 2035 and transform them into ''world-class forces'' by the middle of the 21st century. Xi's vision for the composition and mix of capabilities that would allow the People's Liberation Army to be judged to be a ''world-class'' military is unknown. Will it be a force with global expeditionary capability, mimicking the United States, or an overwhelming regional force reminiscent of Imperial Japan in 1941? Or, as the two are not necessarily mutually exclusive, could it be both? This hearing will explore what the implications of a world-class Chinese military might be for the United States and its allies and partners, with the goal to begin a public dialogue on this topic and develop recommendations for Congress on how the United States might best protect its interests in the face of a highly-capable Chinese competitor. The hearing will be co-chaired by Commissioner Kenneth Lewis and Commissioner Michael McDevitt. Any interested party may file a written statement by June 20, 2019 by mailing to the contact above. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

*Authority:* Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: May 31, 2019.

**Daniel W. Peck,**

*Executive Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. 2019–11693 Filed 6–4–19; 8:45 am]

BILLING CODE 1137–00–P

# FEDERAL REGISTER

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Part II

## Securities and Exchange Commission

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Rules 7.31, 7.36, 7.37; Make Conforming Amendments to NYSE Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and Amend the Preambles on Current Exchange Rules Relating to Their Applicability to the Pillar Trading Platform; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–85962; File No. SR–NYSE–2019–05]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Rules 7.31, 7.36, 7.37; Make Conforming Amendments to NYSE Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and Amend the Preambles on Current Exchange Rules Relating to Their Applicability to the Pillar Trading Platform

May 29, 2019.

### I. Introduction

On February 8, 2019, New York Stock Exchange LLC (''NYSE'' or ''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: (1) Amend NYSE Rules 7.36 and 7.37 to add the designated market maker (''DMM'') as a Participant for trading of Exchange-listed securities on the Exchange's Pillar technology platform; (2) amend NYSE 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 NYSE 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 was published for comment in the **Federal Register** on February 28, 2019.[3]

On March 8, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original filing in its entirety. On April 8, 2019, 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 approve or disapprove the proposed rule change.[4] On April 18, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing, as amended by Amendment No. 1, in its entirety. On May 17, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded the original filing, as amended by Amendments No. 1 and 2, in its entirety.[5] The Commission has received no comments on the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

### II. Self-Regulatory Organization's Description of the Proposal, as Modified by Amendment No. 3

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; [6] (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, 7.36, and 7.37; and (5) amend the preambles on current Exchange rules relating to their applicability to the Pillar trading platform. This Amendment No. 3 supersedes Amendment Nos. 1 and 2 and the original filing in its entirety.[7]

Currently, the Exchange trades UTP Securities on its Pillar trading platform, subject to Pillar Platform Rules 1P–13P.[8] In the next phase of Pillar, the Exchange proposes to transition trading of Exchange-listed securities to the Pillar trading platform.[9] Once transitioned to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85176 (Feb. 22, 2019), 84 FR 6868 (Feb. 28, 2019).

[4] *See* Securities Exchange Act Release No. 85552, 84 FR 15015 (April 12, 2019).

[5] In Amendment No. 3, compared to the original proposal, *see* Notice, *supra* note 3, the Exchange, among other things: (i) Further amends proposed NYSE 7.16 (Short Sales) to provide that, if an order is not executed in an Auction and is eligible to trade, it will be priced consistent with paragraph (f)(5) of NYSE Rule 7.16, and makes certain clarifying changes; (ii) Further amends proposed NYSE Rule 7.18 (Halts) with respect to the processing of Last Sale Peg Orders during a trading halt or pause; (iii) further amends NYSE Rule 7.31 (Orders and Modifiers) to provide: That MOO, MOC, LOC, and Closing IO Orders would not be available to DMMs; that a Closing D Order in an Auction-Eligible Security may include a Yielding Modifier; that until the Closing Auction, a Closing D Order with the proposed Yielding Modifier would be processed as a Yielding Order; that a Closing D Order with a Yielding Modifier would be ranked Priority 4—Yielding Orders; and that a Last Sale Peg Order would not be eligible to participate in any Auctions; (iv) further amends proposed NYSE Rule 7.34 (Trading Sessions) to specify that Last Sale Peg Orders will be rejected if entered before the Core Trading Session begins; (v) provides additional justification for processing DMM After-Auction Orders before other orders; (vi) provides additional explanation for allocating LOC Orders based on time priority; (vii) removes proposed NYSE Rules 7.35C(b)(2)(D) and (E) because the Exchange cannot facilitate an auction if there is no paired volume, and therefore, the Exchange's proposed rules do not need to describe how an Indicative Match Price is determined if there is no paired volume; (viii) removes provisions regarding the use of extension logic from proposed NYSE Rule 7.35C; (ix) provides additional justification for proposed Rule 7.35(e), which would provide that 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; (x) provides additional justification for ranking undisplayed DMM Auction Liquidity as Priority 2—Display Orders; (xi) provides additional justification for proposed NYSE Rules 7.35A(h)(3) and 7.35B(h)(3) regarding DMM Participant Allocation of at-priced DMM Interest; (xii) provides additional justification for canceling orders not eligible to participate in a reopening following a halt or pause in Exchange-listed securities; (xiii) removes proposed Rule 7.35A(d)(2)(v), which would have been new rule text relating to how the Indication Reference Price could be determined for securities that do not fall under proposed Rule 7.35A(d)(2)(A)(i)–(iv) and for which there is limited publicly available pricing information; and (xiv) amends Rule 7.37(b)(2) to specify that the Exchange would create a separate allocation wheel for each Auction.

[6] ''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'').

[7] This Amendment includes the substantive differences between Amendment No. 2 and Amendment No. 1 regarding proposed Rule 7.35C relating to how the Exchange would facilitate an auction if the DMM is not available for one or more securities. As amended, the Exchange proposes that Rule 7.35C would operate consistent with how the Exchange would currently facilitate auctions, including that a re-opening auction following a trading pause would not include extension logic. In addition, Amendment No. 3 removes proposed Rule 7.35A(d)(2)(v), which would have been new rule text relating to how the Indication Reference Price could be determined for securities that do not fall under proposed Rule 7.35A(d)(2)(A)(i)–(iv) and for which there is limited publicly-available pricing information available. Finally, Amendment No. 3 amends Rule 7.37(b)(2) to specify that the Exchange would create a separate allocation wheel for each Auction.

[8] ''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.

[9] The Exchange has announced that, subject to rule approvals, the Exchange will begin transitioning Exchange-listed securities to Pillar on August 5, 2019, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/*

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.[10] 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,[11] 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 continue to be guaranteed to participate in such auctions.[12] 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.'' [13] 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

*Revised_Pillar_Migration_Timeline.pdf.* The Exchange will publish by separate Trader Update a complete symbol migration schedule.

[10] *See* Rules 7.36 and 7.37.

[11] 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).

[12] *See* Rules 115A(a) and 123C(7).

[13] 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, 128, 130, 131, 132, 133, 134, 135, 136, 137, 137A, 138, 139, 140, 141, 142, and 175–227. 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.''

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.[14]
- 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.
- 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.
- 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.

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.[15] Because the Exchange now has rules permitting listing of Exchange Traded Products,[16] the Exchange proposes to include text based on NYSE Arca Rule

[14] 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.

[15] *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).

[16] *See* Rules 5P and 8P.

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 for purposes of Trading Collars for Market Orders under Rule 7.31(a)(1)(B)(i) for UTP Securities only, the Official Closing Price would be the official closing price disseminated by the primary listing market for that security via a public data feed on a trading day and that if the primary listing market does not disseminate an official closing price on a trading day, the Official Closing Price would be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price would be the prior trading day's Official Closing Price.

• 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.

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.*[17] 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)[18] 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. Rule 7.31(c) would further provide that MOO, MOC, LOC, and Closing IO Orders (described below) would not be available to DMMs. This proposed rule change is based on Rule 104(b)(vi) without any substantive differences.

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 discretionary instructions would function on Pillar auctions.[19] 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.[20]

*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.[21]

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.[22] 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).[23] 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.[24]

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

[17] *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.''

[18] *See* discussion *infra* regarding the proposed Rule 7.35 Series.

[19] *See* Rule 70.25(a)(ii).

[20] 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).

[21] 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).

[22] The Exchange recently amended its rules to establish D Orders on the Pillar trading platform, which are based on d-Quotes under Rule 70.25, as well as to establish a Last Sale Peg Modifier and Yielding Modifier. *See* Securities Exchange Act Release Nos. 84806 (December 12, 2018), 83 FR 64913 (December 18, 2018) (Notice of filing) and 85158 (February 15, 2019), 84 FR 5794 (February 22, 2019) (Approval Order) (SR–NYSE–2018–52). The Exchange will be announcing by Trader Update the implementation date for D Orders, the Last Sale Peg Modifier (and related Last Sale Peg Order), and the Yielding Modifier. Because these order types and modifiers will be available when the Exchange transitions Exchange-listed securities to Pillar, this proposed rule change includes how those orders would function in auctions.

[23] 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.

[24] 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).

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 a Closing D Order in an Auction-Eligible Security may include a Yielding Modifier. This would be new functionality on Pillar, as currently, a d-Quote cannot be combined with a g-Quote. As proposed, until the Closing Auction, a Closing D Order with the proposed Yielding Modifier would be processed as a Yielding Order. The Exchange further proposes that a Closing D Order with a Yielding Modifier would be ranked Priority 4—Yielding Orders.[25] When executing in the Closing Auction, a Closing D Order with a Yielding Modifier would trade at its undisplayed discretionary price, but would yield to other non-Yielding orders if such discretionary price is the same as the Auction Price.[26]

Proposed Rule 7.31(c)(2)(C)(iv) 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.[27] 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.

*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.[28] 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

[25] *See* Rule 7.36(e)(4) (Orders ranked Priority 4—Yielding Orders have fourth priority).

[26] As described below, the Exchange proposes to define the term ''Auction Price'' in proposed Rule 7.35(a).

[27] *See* Rule 13(c)(1).

[28] *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).

ignored for opening, re-opening, and closing transactions.

• Rule 7.31(i)(4) would be amended to provide that a Last Sale Peg Order would not be eligible to participate in any Auctions. This functionality would be new on Pillar. The Exchange believes that because orders would be included in an Auction at the limit price of the order (as discussed below in connection with proposed Rule 7.35(b)), processing a Last Sale Peg Order in an Auction at its limit price would defeat the purpose of such order, which is to assist member organizations in their compliance with the ''safe harbor'' provisions of Rule 10b–18 under the Act (''Rule 10b–18'') for issuer repurchases.[29]

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.[30] 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.[31] 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.[32] 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 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.[33] 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.[34] 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

[29] 17 CFR 240.10b–18.

[30] NYSE Arca and NYSE American have each filed an immediately-effective proposed rule change to make similar changes to how Limit Order Price Protection operates on those exchanges. *See* Securities Exchange Act Release Nos. 85265 (March 7, 2019), 84 FR 9175 (March 13, 2019) (SR–NYSEArca–2019–08) (Notice of filing and immediate effectiveness of proposed rule change) and 85272 (March 8, 2019), 84 FR 9403 (March 14, 2019) (SR–NYSEAmer-2019–04) (Notice of filing and immediate effectiveness of proposed rule change) (''NYSE Arca and NYSE American Filings'').

[31] *See* discussion *infra* regarding proposed Rule 7.35A(h) regarding allocation of orders in an Auction.

[32] This proposed rule change is based on a recent amendment to NYSE Arca Rule 7.31–E(h)(2), which similarly provides that Primary Pegged Orders on that exchange will not participate in a closing auction. *See* Securities Exchange Act Release No. 85265 (March 7, 2019), 84 FR 9175 (March 13, 2019) (SR–NYSEArca–2019–08) (Notice of filing and immediate effectiveness of proposed rule change).

[33] 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).

[34] 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.

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.[35] In the Pillar Auction Rules, the Exchange proposes to use the term ''better-priced'' for all Auctions.[36] 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.[37]
  - 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 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[38] 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.[39] 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

[35] 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.

[36] 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).

[37] *See* discussion *infra* regarding proposed Rules 7.35A(h)(2) and (3) and 7.35B(h)(2) and (3).

[38] 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.''

[39] 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.

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.[40] For 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

[40] 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 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.

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.[41] 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.[42]

• 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,[43] 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 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.[44] 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

[41] 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).

[42] 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''.)

[43] 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.

[44] 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), 84 FR 2292 (February 6, 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.''

''Auction Imbalance Freeze'' in the NYSE Arca and NYSE American auction rules.[45]

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.[46]

• 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.[47]

*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 an order.[48] 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.[49]

• 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.[50] 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.[51] 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,[52] 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.

[45] *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).

[46] 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).

[47] *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.''

[48] 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.

[49] 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.

[50] *See* proposed Rule 7.35(b)(1)(C)(i).

[51] *See* proposed Rule 7.35(b)(1)(C)(ii).

[52] 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.

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.[53] 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.[54] 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 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.[55] 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.[56] 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.[57] 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

[53] 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 p.m.

[54] 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.

[55] 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.

[56] *See* discussion *infra* regarding proposed Rule 7.35B(a)(1).

[57] *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.)

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.[58] 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.[59]
- 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 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.[60] 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.[61] 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)

[58] 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.

[59] *See* proposed Rules 7.31(c)(1) and 7.31(h)(2).

[60] 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.

[61] *See* discussion *infra* regarding proposed Rule 7.35B(a)(1).

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.

• 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.[62]

• 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 in the period immediately following 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.[63] The Exchange believes that because the DMM has an obligation not only to maintain a fair and orderly market when arranging an Auction, but also to maintain price continuity with reasonable depth immediately following an Auction, 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 transition from the Auction to continuous trading.[64]

• 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)).[65] 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

[62] *See* Securities Exchange Act Release No. 83768 (August 3, 2018), 83 FR 39488 (August 9, 2018) (SR–NYSE–2018–26) (Approval Order).

[63] 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.

[64] 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.

[65] *See* Proposed Rule 7.35(g)(1).

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 [66] 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.[67] 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 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).[68]

[66] 17 CFR 242.611(b).

[67] *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).

[68] Rules 46, 46A, and 47 specify how Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor

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 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

Governors are appointed and their general authority under Exchange rules.

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 two 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.[69]

• 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.[70]

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.[71]

• 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.''

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.[72]

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.

[69] 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.

[70] 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.

[71] 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).

[72] As discussed below, the Exchange proposes to amend Rule 7.12 to include rule text based on Rule 80B.

• 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 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.[73] 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.[74]

*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 Yielding Orders and 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, including G Orders priced better than the opening or reopening price.[75]
- 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

[73] 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 (which includes G Orders), 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.

[74] The Exchange proposes a related rule change to delete the last sentence of Rule 104(a)(2).

[75] *Id. See also* Securities Exchange Act Release No. 67686 (August 17, 2012), 77 FR 51596 (August 24, 2012) (SR–NYSE–2012–19) (Order approving changes to Rules 115A and 123C to provide that better-priced G Orders are guaranteed to participate in the opening, reopening, or closing transaction) (''G Orders in Auctions Filing'').

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.[76] 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. The Exchange proposes to make a related amendment to Rule 7.37(b)(2) to specify that the Exchange would create a separate allocation wheel for each Auction. Because there are orders that can participate in an Auction but are not eligible to participate in continuous trading, *e.g.,* Auction-Only Orders and certain DMM Interest, the Exchange believes that creating a separate allocation wheel for an Auction would ensure that where Participants are positioned on the Auction allocation wheel would be based on all interest that would be eligible to participate in the Auction. The creation of that allocation wheel and how all such Participants would be positioned on that wheel would be determined pursuant to current Rule 7.37(b)(A)–(F).

○ 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.

○ Next, the display quantity of orders ranked Priority 4—Yielding Orders would be allocated on time (see proposed Rule 7.35A(h)(2)(C)). This proposed allocation is consistent with the Exchange's proposal regarding how displayed Yielding Orders would be allocated on Pillar under Rule 7.37(b)(1)(G).

○ Next, the non-display quantity of orders ranked Priority 4—Yielding Orders would be allocated on time (see proposed Rule 7.35A(h)(2)(D)). This proposed allocation is consistent with the Exchange's proposal regarding how non-displayed Yielding Orders would be allocated on Pillar under Rule 7.37(b)(1)(H).

• 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).[77] 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 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

[76] *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).

[77] 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.

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.[78]

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.[79]

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 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

[78] 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.

[79] 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.

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.[80]

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 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.[81]

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

[80] *See* discussion *infra* regarding proposed Rule 7.35B(h).

[81] 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.

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.[82]
- 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 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

[82] 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.

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.[83]

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

[83] 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).

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)).[84]

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. 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. This proposed rule text is based on Rule 123C(2)(b)(i) with non-substantive differences to use Pillar terminology.[85]

• 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.[86]

○ 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 or D Order in any security or cancel, cancel and replace, or modify a Closing D Order or D Order in an Auction-Eligible Security would be rejected. The proposed rule text relating to restrictions on the entry of Closing D Orders or D Orders in any security is based in part on the operation of d-Quotes for Exchange-listed securities

[84] 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.

[85] 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.

[86] 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.

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, and Rule 7.31(d)(4)(G), relating to D Orders entered in any security 10 seconds or less before the scheduled close of trading. 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. Because restrictions on entry of D Orders in any security in the last 10 seconds of trading would be addressed in proposed Rule 7.35B(f)(3), the Exchange proposes to delete Rule 7.31(d)(4)(G) as duplicative.

The Exchange's proposal to also reject requests to cancel, cancel and replace, or modify Closing D Orders or D Orders during this same period would be new functionality on Pillar. Because this is new functionality, it would be applicable only to Closing D Orders or D Orders in Auction-Eligible Securities. The Exchange does not propose the same restriction for Closing D Orders or D Orders in UTP Securities because such orders 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.[87] 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 Yielding Orders and 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, including G Orders.[88]

• 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 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 disseminated via proprietary data feeds at their limit price when there is no continuous trading before the Core Open or Trading Halt Auction, LOC Orders are not displayed at their limit price and are included in Auction Imbalance Information for the Closing Auction in the aggregate only for purposes of determining the size of the applicable Imbalance. The Exchange does not include LOC Orders in the proprietary data feeds at their limit price because they are not eligible to participate in continuous trading. 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.

○ Next, the display quantity of orders ranked Priority 4—Yielding Orders and Closing D Orders with a Yielding Modifier would be allocated on time

[87] 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.

[88] *See* G Orders in Auctions Filing, *supra* note 73.

(see proposed Rule 7.35B(h)(2)(E)). This proposed allocation is consistent with the Exchange's proposal regarding how displayed Yielding Orders would be allocated on Pillar under Rule 7.37(b)(1)(G). This proposed allocation ranking is also consistent with how orders are allocated pursuant to Rule 123C.[89]

○ Next, the non-display quantity of orders ranked Priority 4—Yielding Orders would be allocated on time (see proposed Rule 7.35B(h)(2)(F)). This proposed allocation is consistent with the Exchange's proposal regarding how non-displayed Yielding Orders would be allocated on Pillar under Rule 7.37(b)(1)(H).

• 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).[90] 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 7.35–E(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 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

[89] *See* Securities Exchange Act Release No. 71246 (January 7, 2014), 79 FR 2231 (January 13, 2014) (SR–NYSE–2013–84) (Notice of filing and immediate effectiveness of proposed rule change to provide that at-priced G Orders yield to CO Orders at the close).

[90] 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.

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)) [91] 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 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 participate 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

[91] *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.

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.[92]

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.[93]

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 and use of Auction Collars.

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 if the Exchange facilitates an Auction, DMM Interest would not be eligible to participate in such Auction and previously-entered DMM Interest would be cancelled. 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 ''[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), proposed Rule 7.35C(a)(2) would provide that Floor Broker Interest that has been electronically accepted by the DMM and that has not been cancelled as provided for in Rule 7.35B(a)(1)(C) (*i.e.,* the DMM has not accepted such cancellation), would be eligible to participate in an Exchange-facilitated Closing Auction. However, if the DMM has not accepted such interest, and therefore that interest has not yet been validated, or if the DMM has accepted a cancellation request, it would not be eligible to participate in an Exchange-facilitated Closing Auction.

Proposed Rule 7.35C(a)(3) 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.

[92] 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 81. 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.

[93] *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.

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)(1), 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 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.[94]

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 except as provided for in proposed Rule 7.35C(e)(2), described below, the upper (lower) boundary of the Auction Collar would be 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.[95]

- Proposed Rule 7.35C(b)(3)(A)(i) would provide that the Auction Collar for the Core Open Auction and the Closing Auction would 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

[94] The Exchange does not propose rule text based on NYSE Arca Rule 7.35–E(a)(8)(D) and (E) and NYSE American Rule 7.35E(a)(8)(D) and (E) because those rules describe how those exchanges determine an Indicative Match Price that would be included in their proprietary data feeds if there is no ''matched volume.'' Because, as described below, the Exchange would not be changing the Auction Imbalance Information when the Exchange facilitates an Auction, and such information does not include a field for Indicative Match Price, and because the Exchange cannot facilitate an Auction if there is no paired volume, the Exchange's proposed rules do not need to describe how an Indicative Match Price is determined if there is no paired volume.

[95] *See* NYSE Arca Rule 7.35–E(a)(10)(A) (third sentence) and NYSE American Rule 7.35E(a)(10)(A) (third sentence).

$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 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.[96]

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 continue to disseminate the same Auction Imbalance Information as provided for in proposed Rules 7.35A(e) and 7.35B(e), described above, provided that a pre-opening indication, as described in proposed Rule 7.35A(d), would not be required for an Exchange-facilitated Auction. As described above, on Pillar, the Exchange would never publish a pre-opening indication, and therefore, the Exchange proposes that when the Exchange facilitates an Auction, it would not be required to publish a pre-opening indication. 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).

As further proposed, 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). 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.[97]

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, the DMM would first be provided an opportunity to facilitate an Auction pursuant to proposed Rule 7.35A or 7.35B.[98] In other words, the Exchange would not invoke the ability to facilitate an Auction without first providing the DMM an opportunity to facilitate an Auction. 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.

Proposed Rule 7.35C(e) would set forth specified logic for a Trading Halt Auction following a trading pause consistent with the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan''),[99] which the Exchange would define as an ''LULD Auction.''

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. 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.

Proposed Rule 7.35C(e)(1) would specify the Auction Reference Price that would be used for an LULD Auction. A proposed, 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)(2) would specify the Auction Collars that would be used for an LULD Auction. As proposed, 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.

At this time, unlike NYSE Arca and NYSE American, the Exchange does not propose to include extension logic for LULD Auctions. The purpose for such extension logic was to provide a mechanism to satisfy all Market Orders and gradually widen Auction Collars if there is no offsetting interest so as to reduce the number of repeat Trading Pauses in a single NMS Stock.[100] As described below, the Exchange proposes that orders outside the applicable Auction Price (if opening on a trade) or Auction Collars (if opening on a quote) would be cancelled, including Market Orders and better-priced Limit Orders. Cancelling such orders would serve the same purpose as the extension logic, which would be to reduce the number of repeat Trading Pauses. The proposed rule is also based on how the Exchange would currently facilitate an opening or reopening auction pursuant to Rule

[96] 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.

[97] 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.

[98] For example, if a security is not open by 9:30 a.m. and then it is determined that the Exchange 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.

[99] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631) (Order approving eighteenth amendment to LULD Plan to make the LULD Plan permanent).

[100] *See, e.g.,* Securities Exchange Act Release No. 79846 (January 17, 2017), 82 FR 8548 (January 26, 2017) (SR–NYSEArca–2016–130) (Order approving extension logic on NYSE Arca).

123D(a)(2)–(6), which similarly does not include extension logic.

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, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders with a limit price that is 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. The proposed rule text provides specificity that all Market Orders, including sell short Market Orders priced at a Permitted Price during a Short Sale Period, would be cancelled if not executed in such an auction.

Proposed Rule 7.35C(g)(2) would similarly provide that if a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders with a limit price that is 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. The Exchange proposes this difference to streamline order processing before a quote would be published. In addition, as described above, cancelling such interest following an LULD Auction would reduce the potential for a repeat Trading Pause.

Proposed Amendments to Rule 7.11 (LULD Plan)

Rule 80C addresses the LULD Plan and related Trading Pauses for Exchange-listed securities.[101] 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.[102]

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.[103]

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

[101] 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.

[102] 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) (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).

[103] *See also* NYSE Arca Rule 7.11–E(b) and NYSE American Rule 7.11E(b).

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, proposed Rule 7.16(f)(8), relating to Auctions, 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).[104] 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. For example, rather than refer to the terms ''single-priced opening, reopening, or closing transaction,'' the Exchange proposes to use the Pillar term of ''Auctions,'' and refer to a ''Core Open Auction,'' ''Trading Halt Auction,'' and ''Closing Auction.'' The Exchange also proposes a non-substantive difference to refer to ''the Exchange'' rather than ''Exchange systems.'' The Exchange further proposes clarifying text to proposed Rule 7.16(f)(8)(A) that any such repricing would be before an Auction. Again, this proposed rule text does not change any functionality, but rather provides transparency of when the repricing would occur. The Exchange believes that the proposed non-substantive differences will promote clarity in Exchange rules and make the text easier to navigate.

The Exchange also proposes new text in paragraph (D) to Rule 7.16(f)(8) that would provide that if an order is not executed in an Auction and is eligible to trade, it would be priced consistent with Rule 7.16(f)(5). This proposed rule text does not represent any new functionality, but rather promotes clarity that after an Auction, an order would be priced to a Permitted Price consistent with Rule 201 of Regulation SHO.[105]

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, Last Sale Peg Orders, and proposed Floor broker cross transaction pending in the Cross Function pursuant to Rule 76.10 (see proposed Rule 7.18(c)(1)).[106]
- 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, Last Sale Peg 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).[107] 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

[104] *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.*

[105] This proposed rule text is also based on NYSE Arca Rule 7.16–E(f)(8) and NYSE American Rule 7.16E(f)(8). *See* NYSE Arca and NYSE American Filings, *supra* note 28.

[106] 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 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.

[107] *See* NYSE Arca and NYSE American Filings, *supra* note 28.

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.[108] 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.[109] 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),[110] 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 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.[111] 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

[108] *See* Rule 7.32.

[109] *See* Rule 1000.

[110] 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.

[111] 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).

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, Last Sale Peg 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.[112] 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,[113] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[114] 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 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

[112] 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.

[113] 15 U.S.C. 78f(b).

[114] 15 U.S.C. 78f(b)(5).

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 and D Orders, as described in proposed Rule 7.35B(f)(3)(B), 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 or D Order to be changed leading into the close.

The Exchange also believes that the proposed new functionality to enable a Floor broker to combine a Yielding Modifier with a Closing D Order would facilitate Floor broker order participation in the closing auction in a manner consistent with the Section 11(a)(1) of the Act. The Exchange further believes that limiting the availability of this functionality to Exchange-listed securities would remove impediments to and perfect the mechanism of a free and open market and a national market system because Closing D Orders in UTP Securities would be routed to the primary listing market for such security, which do not have similar yielding functionality.

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 three 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.

The third substantive difference is for Last Sale Peg Orders, which the Exchange proposes would not participate in any Auctions. The Exchange believes that this proposed rule 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 Last Sale Peg Orders are designed to help member organizations comply with the safe harbor provisions of Rule 10b–18, and if such orders were to participate in an Auction at their limit price, it would defeat the purpose of such order type. Accordingly, the Exchange proposes that such orders would not be eligible to participate in an 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 the proposal that DMM Auction Liquidity would not be displayed, but for the purpose of ranking and allocation in an Auction, would be ranked Priority 2—Display Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because, as described in greater detail above 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. Accordingly, ranking such interest as Priority 2—Display Orders would provide limited benefit to the DMMs in an Auction allocation because it would be applicable to allocations of at-priced orders and the DMM would not have time priority on such allocation wheel.
- 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 the proposed definition of Pre-Auction Freeze and proposed Rule 7.35(e), which would provide that 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, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would support the DMM in facilitating an Auction. Specifically, during the Pre-Auction Freeze, the DMM is facilitating the applicable Auction, and during that period, the DMM can still interact with interest over which it has control—whether by entering the order or accepting Floor Broker Interest. Accordingly, orders over which the DMM has control during the Pre-Auction Freeze are eligible to participate in an Auction. By contrast, during the Pre-Auction Freeze, the DMM would not be able to facilitate an Auction if the orders over which the DMM has no control, *i.e.,* all other orders, continually fluctuate. To facilitate the Auction process, the Exchange therefore proposes that 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 believes that proposed Rule 7.35(f)(3)(B) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate DMMs in meeting their affirmative obligation under Rule 104(f)(ii) not only to maintain a fair and orderly market when arranging an Auction, but also to maintain price continuity with reasonable depth immediately following an Auction. The Exchange believes that processing DMM After-Auction Orders before other orders that were received during the Auction Processing Period (but after orders received before the Auction Processing Period) would promote a fair and orderly transition from the Auction to continuous trading because DMMs would likely be pricing such After-Auction Orders to closely correlate to the Auction Price, thereby promoting price continuity as the Exchange transitions from the Auction to continuous trading.

• 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 proposed Rule 7.35B(h)(2)(C), proposing that LOC Orders would be allocated based on time, rather than together with other displayed orders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because unlike LOO Orders, LOC Orders are not displayed on any proprietary data feeds at their limit price. Because the proprietary data feeds that include LOO Orders are not disseminated when there is continuous trading, such orders are included at their limit price. Accordingly, the Exchange proposes to allocate LOO Orders together with other displayed orders. By contrast, LOC Orders are not displayed at their limit price and are included in Auction Imbalance Information for the Closing Auction in the aggregate only for purposes of determining the size of the applicable Imbalance. Therefore, the Exchange does not include LOC Orders in the proprietary data feeds at their limit price because they are not eligible to participate in continuous trading. 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.

• The Exchange believes that the proposed amendment to Rule 7.37(b)(2) to specify that the Exchange would create a separate allocation wheel for each Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure that all orders that are eligible to participate in an Auction—including orders that are not otherwise eligible to trade during continuous trading—would be positioned on the Auction allocation wheel consistent with current Rule 7.37(b)(2)(A)–(F). The Exchange further believes that this proposed amendment would promote clarity and transparency in Exchange rules.

• The Exchange believes that the proposed Rule 7.35A(h)(3) and 7.35B(h)(3), which describes the proposed DMM Participant Allocation of at-priced DMM Interest, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide continuity in how at-

priced DMM interest is allocated compared to current functionality. As with current rules, at-priced DMM Interest would be included in parity allocations in an Auction and the Exchange proposes to move such DMM Interest to the end of the parity allocation wheel under specified circumstances so that later-arriving or better-priced DMM Interest does not get priority in an Auction allocation. The Exchange believes that the proposed rules would promote transparency in the Exchange's rules regarding how DMM interest would be allocated, and in particular, how multiple orders entered by a DMM would be allocated.

• 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 by eliminating orders that may potentially be priced away from where the Trading Halt Auction may reopen, and result in post-auction trading that is not consistent with the Auction Price. In addition, the Exchange believes that if an order is not eligible to participate in an Auction, it should be cancelled back so that the entering firm has an opportunity to assess whether to re-enter the order in a format that would be auction-eligible.

• 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 similar processing for all Trading Halt Auctions, with the exception of how an Auction Reference Price and Auction Collars would be determined for an LULD Auction, 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 is consistent with current functionality and rules. With respect to LULD Auctions, the Exchange believes that the proposal to cancel Market Orders and better-priced Limit Orders following such auction would reduce the potential for repeat Trading Pauses, and thus would serve a similar purpose as the extension logic that is available on NYSE Arca and NYSE American for such auctions.

*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,[115] 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.

[115] 15 U.S.C. 78f(b)(8).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Discussion and Commission Findings**

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[116] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,[117] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

To enable the transition of Exchange-listed securities to the Pillar Trading Platform, the Exchange proposes several rule changes to the Pillar Platform Rules,[118] Pillar Auction Rules,[119] and other relevant Exchange rules. Generally, the proposed rule changes fall into four categories: (1) Proposed changes that maintain current Exchange functionality and rules but convert them to the terminology of the Pillar platform, (2) proposed changes to Exchange functionality that are consistent with Pillar functionality and rules previously approved by the Commission for NYSE Arca or NYSE American, which also use the Pillar platform; (3) proposed changes that introduce new, substantively different functionality that is related to the roles of DMMs and Floor brokers on the Pillar Trading Platform and the operation of Pillar Auctions for Exchange-listed securities; and (4) conforming and clarifying changes to these and other relevant Exchange rules that are of a non-substantive or administrative nature.

[116] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[117] 15 U.S.C. 78f(b)(5).

[118] *See supra* Section II.A.1.

[119] *See id.*

*A. Proposed Rule Changes Based on Current Exchange Functionality*

The Exchange proposes changes to certain rules based on current Exchange functionality and rules in order to facilitate the transition of Exchange-listed securities to the Pillar Trading Platform. Specifically, the Exchange proposes amendments to NYSE Rule 1.1 (Definitions),[120] certain provisions of the NYSE Rule 7.35 Series (Pillar Auction Rules),[121] as well as NYSE Rules 7.16 (Short Sales), 7.36 (Order Ranking and Display), 7.37 (Order Execution and Routing),[122] 7.31(c) (Orders and Modifiers),[123] 7.12 (Market Wide Circuit Breakers), 7.32 (Order Entry), 7.34 (Trading Sessions), and 7.36 (Order Ranking and Display). The Exchange represents that the proposed changes noted above are substantially similar to current Exchange functionality and are based on current Exchange rules. The Commission believes that these proposed changes do not raise regulatory issues or concerns and are consistent with the Act.

*B. Proposed Rule Changes Based on Existing Pillar Functionality*

The Exchange proposes changes to certain rules in ways that are consistent with the current Pillar functionality and rules of NYSE Arca or NYSE American. Specifically, the Exchange proposes amendments to NYSE Rules 1.1 (Definitions) to define the term ''Closing Price,'' 7.31 (relating to orders not eligible to participate in an auction),[124] 7.11 (LULD Plan),[125] 7.18 (Halts),[126] 7.37 (Order Execution and Routing), and certain provisions of the NYSE Rule

[120] The proposed definition of ''Closing Price'' in NYSE Rule 1.1 (Definitions), however, is based on current Pillar functionality, and is discussed in greater detail in Section III.B, *infra.*

[121] A detailed description of the proposed Pillar Auction Rules that are based on current Exchange functionality can be found in Section II.A.1, *supra.*

[122] The proposed amendment to NYSE Rule 7.37(b)(2), however, is based in substantial part on current Pillar functionality and is discussed in greater detail in Section III.B, *infra.*

[123] The proposed amendment to NYSE Rule 7.31(b)(2), however, is based in substantial part on existing Pillar functionality and is discussed in greater in Section III.B, *infra.* In addition, the proposed amendments to NYSE Rules 7.31(c)(2)(C)(iii) and 7.31(i)(4) reflect substantive changes and are discussed in greater detail in Section III.C, *infra.*

[124] *See supra* note 123 and accompanying text.

[125] NYSE Rule 7.11 (LULD Plan) addresses the LULD Plan for UTP Securities.

[126] *See supra,* Section II.A.1.

7.35 Series (Pillar Auction Rules).[127] The Exchange represents that the proposed changes noted above are similar to current Pillar functionality on NYSE Arca or NYSE American and that they are based on the rules of those exchanges. The Commission believes that these proposed changes are reasonably designed to operate in manner that is substantially consistent with the trading of securities on Pillar technology on NYSE Arca or NYSE American, the rules for which were filed and approved by the Commission (or which became immediately effective) pursuant to Section 19(b) of the Act, and therefore do not raise regulatory issues or concerns. Accordingly, the Commission finds these proposed changes consistent with the Act.

*C. Proposed Rule Changes To Add New Substantive Functionality*

The Exchange proposes the following changes that introduce new, substantively different functionality that is related to the roles of DMMs and Floor brokers on the Pillar Trading Platform and the operation of Pillar Auctions for Exchange-listed securities.

1. Closing D Orders

Proposed NYSE Rule 7.31(c)(2)(C)(iii) (Orders and Modifiers), provides that a Closing D Order in an Auction-Eligible Security may include a Yielding Modifier.[128] This would be new functionality on Pillar, as currently, a d-Quote cannot be combined with a g-Quote. As proposed, a Closing D Order with the proposed Yielding Modifier would be processed as a Yielding Order until the Closing Auction and would be ranked Priority 4—Yielding Orders.[129] The Commission believes that the proposal to enable a Floor broker to attach a Yielding Modifier to a Closing D Order would facilitate Floor broker order participation in the closing auction consistent with Section 11(a)(1) of the Act because it would permit a Floor broker to submit an order that would participate in the Auction only after yielding to orders from other types of market participants. The Commission also believes that limiting this functionality to Exchange-listed securities is consistent with the Act because Closing D Orders for a UTP Security would be routed to the primary listing market which would not have similar yielding functionality.

2. Last Sale Peg Order

Proposed NYSE Rule 7.31(i)(4) (Orders and Modifiers), provides that a Last Sale Peg Order would not be eligible to participate in any Auctions. The Commission believes that this proposed rule change is consistent with the Act because Last Sale Peg Orders are designed to help member organizations comply with the safe harbor provisions of Rule 10b–18,[130] and it would be inconsistent with the purpose of this order type for such orders to participate in an Auction at their limit price.

3. Proposed NYSE Rule 7.35 Series—Auctions

The Exchange several Pillar Auction Rules under the NYSE Rule 7.35 Series: Proposed NYSE Rule 7.35 (General), proposed NYSE Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions), proposed NYSE Rule 7.35B (DMM-Facilitated Closing Auctions), and proposed NYSE Rule 7.35C (Exchange-Facilitated Auctions). The Exchange represents that the amended Pillar Auction Rules are based on, and will operate largely the same as, the Current Auction Rules on the Exchange, and the proposal includes conforming textual changes using standardized Pillar terminology. The Exchange, as detailed below, also proposes Pillar Auction Rules that are substantively different than the Current Auction Rules.

a. Consolidated Last Sale as the Imbalance Reference Price

Under proposed NYSE Rule 7.35A(e)(3), the Imbalance Reference Price for the Auction Imbalance Information for the Core Open and Trading Halt Auctions would be the Consolidated Last Sale Price, instead of the last reported sale price on the Exchange, unless a pre-opening indication has been published. The Commission believes that the use of the Consolidated Last Sale Price, rather than the last reported sale price on the Exchange, is consistent with the Act because it would allow for the Exchange to use the most recent valuation for purposes of assessing price movement leading into an Auction.

b. Pre-Auction Freeze

Proposed NYSE Rule 7.35(e) permits DMM Auction Liquidity, certain DMM Orders,[131] and Floor Broker Interest entered during the Pre-Auction Freeze to participate in the applicable Auction. The Exchange asserts that, during the Pre-Auction Freeze, the DMM can interact with interest over which it has control, whether by entering the order or accepting Floor Broker Interest. The Commission believes it is consistent with the Act that other orders—*i.e.,* orders other than DMM Auction Liquidity, certain DMM Orders, and Floor Broker Interest—entered during the Pre-Auction Freeze would be considered entered during the Auction Processing Period, and that they would be accepted but not eligible to participate in an Auction, because the DMM would not be able to facilitate an Auction if orders over which the DMM exercised no control continually fluctuated.

c. Regulatory Closing Imbalance/Closing Auction Imbalance Freeze Time

Under proposed NYSE Rule 7.35B(d)(1)(C), a Regulatory Closing Imbalance for a security would be disseminated at the Closing Auction Imbalance Freeze Time even if the security has not opened or if it is halted or paused at that time. The Exchange asserts that disseminating a Regulatory Closing Imbalance under these circumstances would permit the entry of offsetting MOC and LOC Orders during a trading halt that continues past the Closing Auction Imbalance Freeze Time. The Commission believes this proposed rule is reasonably designed to assist with an orderly Closing Auction and is therefore consistent with the Act.

d. Auction Imbalance Information

Proposed Rule 7.35(c)(2) would provide that Auction Imbalance Information for the Closing Auction would continue to be disseminated until the Closing Auction begins. The Commission believes that continuing to disseminate Auction Imbalance Information for the Closing Auction until the Auction is conducted would 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

[127] The specific provisions of the proposed Pillar Auction Rules that are based on the current Pillar functionality and rules of NYSE Arca and NYSE American are discussed in detail in Section II.A.1, *supra.* Discussion of the substantively changed provisions is in Section III.C.3, *infra.*

[128] *See supra,* Section II.A.1.

[129] *See* NYSE Rule 7.36(e)(4) (Orders ranked Priority 4—Yielding Orders have fourth priority). The Exchange states that, when executing in the Closing Auction, a Closing D Order with a Yielding Modifier would trade at its undisplayed discretionary price, but would yield to other non-Yielding orders if such discretionary price is the same as the Auction Price. The term ''Auction Price'' is defined in proposed NYSE Rule 7.35(a). *See supra* Section II.A.1.

[130] 17 CFR 240.10b-18.

[131] 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 NYSE Rules 104(b) and (a)(2) or (a)(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.

when Floor Broker Interest is incorporated into that information.

e. Floor Broker Interest at the Close

Under proposed Rule 7.35B(a)(1), each Floor broker would be responsible for electronically entering, for participation in the Closing Auction, interest that has been properly represented orally at the point of sale by the end of Core Trading Hours. The DMM would, in turn, be responsible for validating all Floor Broker Interest, which would include validating that the interest had been properly represented orally before the end of Core Trading Hours. The Commission believes that the proposed change 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, while being reasonably designed to ensure that Floor Broker Interest entered into the system had been properly represented orally by the Floor broker before the end of Core Trading Hours.

In addition, under proposed Rule 7.35B(a)(1)(A)(i), Floor Broker Interest for the Closing Auction would be required to include a limit price and, under proposed Rules 7.35B(a)(1)(B) and 7.35B(h)(2), would be processed as part of the Auction allocation the same as any other order with a limit price. The Commission believes that these proposed changes are reasonably designed to standardize the processing of orders with a limit price in the Closing Auction, and to eliminate any differences regarding how interest represented orally at the close by a Floor broker would be processed as compared to electronically entered orders, and are therefore consistent with the Act.

f. LOC Order Ranking

Under proposed NYSE Rule 7.35B(h)(2)(C), LOC Orders would be allocated based on time priority, rather than together with other displayed orders. The Exchange asserts that this change is appropriate because, unlike LOO Orders, LOC Orders are not displayed on any proprietary data feeds at their limit price and are included in Auction Imbalance Information for the Closing Auction in the aggregate only for purposes of determining the size of the applicable Imbalance. The Commission believes it is consistent with the Act to give orders ranked Priority 3—Non-Displayed Orders priority over LOC Orders because, unlike LOC Orders, these orders are eligible to trade before the Closing Auction.

g. Canceling Orders During a Halt or Pause

The Exchange proposes that it would, during a halt or pause in Exchange-listed securities, cancel orders that are not eligible to participate in the reopening. The Commission notes that these canceled orders could be priced away from the reopening prices of the Trading Halt Auction and could potentially disrupt the orderly reopening of continuous trading at prices related to the Auction Price. The Commission also notes that cancellation of these orders would allow the entering firm to assess whether to re-enter the order in an auction-eligible format. Accordingly, the Commission believes that this proposed change is consistent with the Act.

h. Calculation of Collars for Exchange-Facilitated Auctions

Proposed Rule 7.35C(b)(3)(A)(i) provides that—when the Exchange facilitates an auction because the assigned DMM is unable to do so—the Auction Collar for the Core Open Auction and the Closing Auction would be based on a price that is the greater of $0.15 or 10% away from the Auction Reference Price for the applicable Auction. The 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. However, the Exchange proposes to use $0.15 as the threshold, rather than $0.50, so that the threshold matches that proposed for Auction Collars for Trading Halt Auctions. The Commission believes that the proposed rule is consistent with the Act and would simplify the operation of Auction Collars for the Core Open Auction, the Closing Auction, and Trading Halt Auctions by basing the Auction Collars on the same threshold.

i. DMM Interest in Auctions

Under the Exchange's proposal, DMM Auction Liquidity would be non-displayed buy or sell interest entered by a DMM and designated only for an Auction. The Exchange proposes to rank DMM Auction Liquidity as Priority 2—Display Orders, even though DMM Auction Liquidity is not displayed. As proposed, however, the Priority 2—Display Orders ranking for DMM Auction Liquidity would be applicable only to allocations of at-priced orders, and the DMM would not receive time priority on the allocation wheel if the only DMM Interest is DMM Auction Liquidity. The Commission believes that these proposed changes are broadly consistent with current Exchange functionality, which permits DMMs to enter undisplayed offsetting interest that trades on parity with at-priced interest if an imbalance remains after better-priced interest has executed. The Commission also believes that these proposed changes are consistent with the Act because they are reasonably designed to assist DMMs in supplying additional liquidity to an Auction, consistent with their affirmative obligations, because (a) the Exchange would give Priority 2—Display Orders ranking only to allocation of at-priced DMM Auction Interest; (b) the DMM would not receive time priority if entering only DMM Auction Liquidity; and (c) later-arriving or better-priced DMM Interest would not receive time priority over other orders that would be eligible to participate in the Auction.

*D. Conforming and Other Administrative Amendments*

The Exchange proposes conforming, non-substantive amendments to NYSE Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.31, 7.34, 7.36, and 7.37. The Exchange also proposes changes to Current Auction Rules and other relevant Exchange rules to add text or delete references to UTP Securities to clarify the applicability of those rules to the Pillar trading platform.[132] The Commission believes that these proposed changes are designed to conform the new and existing rules using standard Pillar terminology, make the operation of the Exchange more transparent, and ease navigation of Exchange rules. Accordingly, the Commission finds the proposed rule changes are consistent with the Act.

## IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 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

[132] *See supra* Section II.A.1.

• Send an email 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–05 and should be submitted on or before June 26, 2019.

## V. Accelerated Approval of Amendment No. 3

As noted above,[133] in Amendment No. 3, as compared to the original proposal,[134] the Exchange proposes—in addition to removing certain proposed rule changes and providing further justification for elements of the proposal—to amend proposed NYSE Rules 7.16 (Short Sales), 7.18 (Halts), 7.31 (Orders and Modifiers), 7.34 (Trading Sessions), and 7.37 (Order Execution and Routing), and to modify certain proposed trading rules relating to auctions for Pillar.

The Commission believes that the amendments to proposed Rules 7.16(f)(8) (Short Sales), 7.18(c) (Halts), 7.31 (Orders and Modifiers) (with respect to MOO, MOC, LOC, and Closing IO Orders), and 7.34(c)(1)(D) (Trading Sessions) are consistent with the Act and raise no novel regulatory issues because they are based on current Exchange functionality or current Pillar functionality.

The Exchange also proposes to amend proposed NYSE Rule 7.31(c)(2)(C)(iii) (Orders and Modifiers) to provide that a Closing D Order in an Auction-Eligible Security may include a Yielding Modifier.[135] The Commission believes that the amendment to proposed NYSE Rule 7.31(c)(2)(C)(iii) is consistent with the Act because, by specifying that the Closing D Order would yield to all interest other than yielding interest, it is reasonably designed to facilitate Floor broker order participation in the closing auction consistent with Section 11(a)(1) of the Act. The Commission also believes that limiting this functionality to Exchange-listed securities is consistent with the Act, because Closing D Orders for a UTP Security would be routed to the primary listing market, which would not have similar yielding functionality.

In addition, the Exchange proposes amending proposed NYSE Rule 7.37(b)(2) (Order Execution and Routing) to specify that the Exchange would create a separate allocation wheel for each Auction. The Commission believes that the proposal to amend NYSE Rule 7.37(b)(2) to create a separate allocation wheel for each Auction is consistent with the Act because it is reasonably designed to ensure that where Participants are positioned on the Auction allocation wheel is based on all interest that would be eligible to participate in the Auction.

Therefore, the Commission finds that Amendment No. 3 to the proposal raises no novel regulatory issues, that it is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[136] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[137] that the proposed rule change (SR–NYSE–2019–05), as modified by Amendment No. 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[138]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–11566 Filed 6–4–19; 8:45 am]

BILLING CODE 8011–01–P

[133] *See supra* note 5.

[134] *See* Notice, *supra* note 3.

[135] *See supra* Section II.A.1.

[136] 15 U.S.C. 78s(b)(2).

[137] 15 U.S.C. 78s(b)(2).

[138] 17 CFR 200.30–3(a)(12).

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Part III

## Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2019; Proposed Rule

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[MD Docket Nos. 19–105; FCC 19–37]**

## Assessment and Collection of Regulatory Fees for Fiscal Year 2019

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes to revise its Schedule of Regulatory Fees to recover an amount of $339,000,000 that Congress has required the Commission to collect for fiscal year 2019.

**DATES:** Submit comments on or before June 7, 2019; and reply comments on or before June 24, 2019.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 19–105, 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MD Docket No. 19–105, FCC 19–37, adopted on May 7, 2019 and released on May 8, 2019. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

### I. Procedural Matters

*A. Ex Parte Information*

1. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.[1] 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 electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

*B. Filing Instructions*

2. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to FCC, 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.

3. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

*C. Initial Regulatory Flexibility Analysis*

4. An initial regulatory flexibility analysis (IRFA) is contained in this summary. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice of Proposed Rulemaking. The Commission will send a copy of the Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

*D. Initial Paperwork Reduction Act of 1995 Analysis*

5. This document does not contain new or modified information collection requirements subject to the Paperwork

[1] 47 CFR 1.1200 *et seq.*

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

## II. Introduction

6. In this Notice of Proposed Rulemaking (*NPRM*), we seek comment on the Commission's proposed regulatory fees for fiscal year (FY) 2019. Specifically, we propose to collect $339,000,000 in regulatory fees for FY 2019,[2] pursuant to sections 9 and 9A of the Communications Act of 1934, as amended (Act or Communications Act), and the Commission's FY 2019 Appropriation.[3] The proposed regulatory fee schedule for FY 2019 is set forth in Tables 2 and 3. For comparison purposes, the FY 2018 regulatory fee rates are listed in Table 7. In this *NPRM,* we also seek comment on modifications to the Commission's regulatory fee authority under the RAY BAUM'S Act of 2018.

## III. Background

7. In 2018, as part of the RAY BAUM'S Act, Congress revised the Commission's regulatory fee authority by modifying section 9 and adding section 9A to the Communications Act.[4] In making such changes, Congress deleted outdated language from the statute, removed the now obsolete statutory schedule of regulatory fees originally adopted in 1993,[5] redirected the Commission on how to update regulatory fees, and revised and reformatted other provisions of the statute.[6] Congress directed the Commission to complete a regulatory fee rulemaking under the modified statute by October 2019.[7]

8. Congress established the Commission's regulatory fee authority in 1993 when Congress adopted a statutory schedule of regulatory fees and charged the Commission with updating and amending the schedule pursuant to statutory guidance on an annual basis.[8] The Commission discharged its statutory obligation by (1) adopting regulatory fee rules [9] and descriptions of each fee category listed in the statute [10] and (2) annually making adjustments to the fee schedule through a notice and comment rulemaking proceeding.[11] Such annual reviews of the fee schedule proposed revisions to the schedule to reflect changes in the amount of the Commission's appropriation and other changes based upon the criteria included in section 9 of the Communications Act.

9. Since 1993, the Commission has made numerous changes to the schedule. In making such changes, the Commission used the statutory criterion that the fee reflect the benefits provided to the payor of the fee and factors reasonably related to that criterion. For example, in the *FY 2013 Report and Order,* the Commission updated the full-time equivalents (FTE) [12] allocations to more accurately reflect the number of FTEs working on regulation and oversight of regulatees in the fee categories.[13] The Commission has since updated the FTE allocations annually. Other recent examples include the *FY 2015 NPRM,* where the Commission adopted a regulatory fee category for Direct Broadcast Satellite (DBS), as a subcategory of the cable television and IPTV fee category.[14] In explaining the change, the Commission described both the change in the service and the Commission's regulation thereof in the decades since adoption of the original fee schedule and how DBS providers benefited from the work of Media Bureau FTEs on multichannel video programming distributors (MVPDs).[15] And in the *FY 2016 Report and Order,* the Commission adjusted regulatory fees for radio and television broadcasters, based on the type and class of service and on the population served.[16] The Commission has also made other improvements to its regulatory fee analysis as part of its annual review. For example, in the *FY 2017 Report and Order,* the Commission included non-common carrier terrestrial international bearer circuits in the regulatory fee methodology and increased the de minimis threshold to $1,000 for annual regulatory fee payors.[17]

## IV. Discussion

10. In this *NPRM,* we (1) explain and seek comment on the RAY BAUM'S Act modifications to the Commission's regulatory fee authority; (2) propose and seek comment on a schedule, as set forth in Tables 2 and 3, of FY 2019 regulatory fees, which are due in September 2019; and (3) propose and seek comment on granular aspects of the regulatory fee calculation for DBS

[2] Fiscal year 2019 started on October 1, 2018.

[3] 47 U.S.C. 159. Consolidated Appropriations Act, 2019, Public Law Number 116–6, Division D—Financial Services and General Government Appropriations Act, 2019, Title V—Independent Agencies (2019) (FY 2019 Appropriation).

[4] Consolidated Appropriations Act, 2018, Division P—RAY BAUM'S Act of 2018, Title I, FCC Reauthorization, Public Law Number 115–141, section 102, 132 Stat. 348, 1082–86 (2018) (codified at 47 U.S.C. 159, 159A). Congress provided an effective date of October 1, 2018 for such changes.

[5] As explained below, the Commission annually conducts a rulemaking proceeding to update the schedule of regulatory fees—adding, deleting, and adjusting fee categories and fee rates pursuant to guidance provided in section 9. Thus, the schedule found in prior section 9 represents the initial baseline schedule of regulatory fee categories and rates.

[6] The changes are discussed in detail below. Table 8 contains the full text of section 9 before and after the effective date of the RAY BAUM'S Act modifications.

[7] *See* section 102(e)(1) of the RAY BAUM'S Act of 2018 (''Not later than 1 year after the effective date described in section 103 of this title, the Commission shall complete a rulemaking proceeding under subsection (d) of section 9 of the Communications Act of 1934, as amended by subsection (b) of this section.''). Congress also provided that the Commission should file a progress report with Congress. *See* uncodified provision of section 102(e)(2) of the RAY BAUM'S Act of 2018 (''If the Commission has not completed the rulemaking proceeding required by paragraph (1) by the date that is 6 months after the effective date described in section 103 of this title, the Commission shall submit to Congress a report on the progress of such rulemaking proceeding.'').

[8] Section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter, ''1993 Budget Act''). See Public Law Number 103–66, Title VI, 6002(a), 107 Stat. 397 (approved August 10, 1993). Congress made subsequent minor amendments to the schedule.

[9] Currently codified in 47 CFR 1.1152–1.1156.

[10] *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year,* Report and Order, 9 FCC Rcd 5333, 5344 and Appendix B (1994), *recon. denied,* 10 FCC Rcd 12759 (1995) (*1994 Report and Order*) (providing the full descriptions of the fee categories).

[11] For a summary of recent changes and improvements to the regulatory fee schedule, *see Assessment and Collection of Regulatory Fees for Fiscal Year 2018,* Report and Order and Notice of Proposed Rulemaking, 33 FCC 5091, 5093–94, paragraph 5 (2018) (*FY 2018 NPRM*).

[12] One FTE, a ''Full Time Equivalent'' or ''Full Time Employee,'' is a unit of measure equal to the work performed annually by a full-time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget.

[13] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013,* Report and Order, 28 FCC Rcd 12351, 12354–58, paragraphs 10–20 (2013) (FY 2013 Report and Order).

[14] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015,* Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354, 5364–5373, paragraphs 28–41 (2015) (*FY 2015 NPRM*).

[15] The Commission stated ''[s]ince DBS providers generally benefit from the regulatory activities of the Media Bureau, much like cable operators and IPTV providers, the Commission can attribute Media Bureau FTEs to DBS providers and require them to pay Media Bureau regulatory fees.'' *FY 2015 NPRM,* 30 FCC at 5370, paragraph 35. MVPD is defined in section 602(13) of the Act, 47 U.S.C. 522(13).

[16] *Assessment and Collection of Regulatory Fees for Fiscal Year 2016,* Report and Order, 31 FCC Rcd 10339, 10350–51, paragraphs 31–33 (2016) *(FY 2016 Report and Order).*

[17] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017,* Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7071–74, paragraphs 34–35, 38–42 (2017) (FY 2017 Report and Order).

providers, full-power broadcast television, and international bearer circuits. Finally, we reaffirm and restate certain rules that are fundamental to the enforcement and collection aspects of the Commission's regulatory fee regime.

*A. RAY BAUM'S Act Modifications to the Commission's Regulatory Fee Authority*

11. Although aspects of section 9 of the Communications Act have been modified by the RAY BAUM'S Act, the Commission's core responsibilities under the statute remain unchanged. The Commission remains charged with ensuring that regulatory fees will result in collections of amounts that can reasonably be expected to equal amounts appropriated by Congress for each fiscal year.[18]

12. In the RAY BAUM'S Act modifications, Congress deleted the obsolete schedule of regulatory fees codified in the former section 9(g) of the Act[19] and directed the Commission to establish a new schedule of regulatory fees and to provide annual updates thereafter.[20] In plain terms, Congress directed the Commission to establish a new schedule of regulatory fees by amending ''the schedule of regulatory fees established under this section if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [21] Each year thereafter, the Commission is required to adjust the schedule of regulatory fees established under this section to ''(A) reflect unexpected increases or decreases in the number of units subject to the payment of such fees; and (B) result in the collection of the amount required'' by the Commission's annual appropriation.[22] In such annual regulatory fee adjustments, the Commission may make further amendments to the schedule if the Commission determines that the statutory criteria are satisfied.

13. The scheme as articulated under the RAY BAUM'S Act is closely aligned to how the Commission implemented its authority under the prior version of section 9 of the Communications Act. Under both old and new versions of the statute, the Commission is charged with assessing and collecting regulatory fees that will result in collections of amounts that can reasonably be expected to equal amounts appropriated by Congress for each fiscal year.[23] Again, under both old and new versions of the statute, regulatory fees are initially apportioned across fee categories based on the number of FTEs and adjusted ''to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [24] Not surprisingly, the Commission's consideration of changes, additions, or deletions to its fee schedule since 1993 have been focused on the FTE burdens related to the regulatory fee category at issue. As exercised, the Commission's fee determinations have been carefully considered.[25] Thus, in this NPRM we are proposing to hew closely to our prior annual process for adjusting and amending fee categories and the fee schedule. We seek comment on this proposal.

14. Certain language was, however, deleted from section 9 in the RAY BAUM'S Act. First, the prior statute identified three bureaus that have since been renamed.[26] Second, the prior statute included a list of examples of factors relevant to the Commission's inquiry into benefits provided the payor of the fee; those examples were ''service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.'' [27] Third, while both versions of the statute require the Commission to take into consideration in its annual review unexpected increases or decreases in the ''number of units'' subject to the payment of regulatory fees, the prior statute specifically mentioned licensees.[28] Finally, under the prior version of section 9, in amending the schedule of regulatory fees, the Commission could take into consideration ''additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.'' [29] The old version of the statute described the annual changes as either mandatory amendments [30] or permitted amendments; [31] under the RAY BAUM'S Act, the changes are described as adjustments [32] or amendments.[33] We seek comment on how these deletions and changes impact the Commission's responsibilities in assessing and collecting regulatory fees. Commenters should discuss any effect on the Commission's proposed regulatory fee methodology due to deletion of language or the reformulation of the requirements under section 9.[34]

15. We remind commenters of certain unvarying aspects of the Commission's assessment and collection of regulatory fees that they should take into consideration when making comments on our proposals. Regulatory fees, mandated by Congress, are collected to recover the Commission's costs ''to the extent, and in the total amounts, provided for in Appropriation Acts.'' [35] Thus, the Commission has no discretion regarding the total amount to be collected in any given fiscal year. Regulatory fees are to reflect ''the full-time equivalent number of employees

[18] 47 U.S.C. 159(a) (''shall assess and collect regulatory fees''), 159(b) (''Commission shall assess and collect regulatory fees at such rates as the Commission shall establish in a schedule of regulatory fees that will result in the collection, in each fiscal year, of an amount that can reasonably be expected to equal the amounts described in subsection (a) with respect to such fiscal year.''). *See also* 47 U.S.C. 156(b).

[19] Although the Commission adopts a new schedule of regulatory fees each fiscal year in the Commission's rules, the initial (obsolete) schedule remained in former section 9(g) of the Act.

[20] 47 U.S.C. 159(b) (requirement to establish a schedule); *see supra* n.7 (citing uncodified provision of section 102(e)(1) of the RAY BAUM'S Act of 2018, which directs the Commission to ''complete a rulemaking proceeding under subsection (d) of section 9 of the Communications Act of 1934, as amended by subsection (b) of this section'').

[21] 47 U.S.C. 159(d). Such changes are referred to as amendments under section 9(d) in section 9A(a) referencing adjustments under section 9(d).

[22] 47 U.S.C. 159(c). Such changes are referred to as adjustments under section 9(c) in section 9A(a) referencing adjustments under section 9(c).

[23] Compare prior section 9(a) with new sections 9(a) and (b).

[24] Compare prior section 9(b)(1)(A) with new section new 9(d).

[25] *See supra* paragraph 4 (summarizing several prior Commission regulatory fee orders making revisions to our methodology).

[26] The Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau.

[27] *See* prior section 9(b)(1)(A).

[28] Compare prior section 9(b)(2) ''be adjusted to reflect . . . unexpected increases or decreases in the number of licensees or units'' with new section 9(c)(1)(A) ''reflect unexpected increases or decreases in the number of units subject to the payment of such fees. . . .''

[29] *See* prior section 9(b)(3).

[30] *See* prior section 9(b)(2) entitled ''Mandatory Adjustment of Schedule.'' These adjustments occurred if the Commission determined ''that the Schedule requires amendment to comply with the requirements'' of prior section 9(b)(1)(A).

[31] *See* prior section 9(b)(3) entitled ''Permitted Amendments.''

[32] 47 U.S.C. 159(c) Adjustment of Schedule.

[33] 47 U.S.C. 159(d) Amendments to Schedule.

[34] The Commission has stated that three overarching goals for assessing regulatory fees are fairness, administrability, and sustainability. *See* Procedures for Assessment and Collection of Regulatory Fees, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8464–65, paragraphs 14–16 (2012) (*FY 2012 NPRM*). Commenters should discuss whether these three goals are still applicable under the new sections 9 and 9A in the RAY BAUM'S Act. The concept of administrability would include the difficulty in collecting regulatory fees under a system that could have unpredictable dramatic shifts in assessed fees in certain categories from year to year.

[35] 47 U.S.C. 159(a).

within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [36] Thus the calculation and allocation of FTEs across regulatory fee categories is, by statute, at the heart of the Commission's methodology in calculating regulatory fees. Regulatory fees recover the Commission's direct costs—that is, costs attributable to a specific regulatory activity (*e.g.,* the salaries and benefits of Commission employees that work on the oversight and regulation of local exchange carriers). Regulatory fees also recover indirect costs, *i.e.,* common costs that are not attributable to a specific regulatory activity. These costs are for general overhead, administration, and support, such as rent, utilities, salaries, and benefits of information technology and other employees whose work supports the core bureaus, and general-purpose equipment.[37] Regulatory fees also cover the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees [38] and entities whose regulatory fees are waived.[39] We also remind commenters that FTE time devoted to developing and implementing the Commission's spectrum auctions is not included in the calculation of regulatory fees and is not offset by the collection of regulatory fees. Instead, such FTE time is offset by the auction proceeds that the Commission is permitted to retain pursuant to section 309(j)(8)(B) [40] of the Communications Act and the Commission's annual appropriation.[41]

*B. Allocating FTEs Across Categories for FY 2019*

16. Applying the section 9 requirements to calculate regulatory fees, we propose to allocate the total collection target across all regulatory fee categories. We propose that for FY 2019 the allocation of fees to fee categories will be based on the Commission's calculation of FTEs in each regulatory fee category. Our proposed methodology is generally consistent with that employed in FY 2018. As a general matter, we reasonably expect that the work of the FTEs in the four ''core'' bureaus (*i.e.,* Wireline Competition Bureau, Wireless Telecommunications Bureau, International Bureau, and Media Bureau) [42] will remain focused on the industry segment regulated by each of those bureaus. The work of the FTEs in the indirect bureaus and offices benefits the Commission and the telecommunications industry and is not specifically focused on the regulatees and licensees of a core bureau. The total FTEs for each fee category includes the direct FTEs associated with that category, plus a proportional allocation of indirect FTEs.[43]

17. Historically, the Commission allocates the total amount to be collected among the various regulatory fee categories within each of the core bureaus. Each regulatee within a fee category then pays its proportionate share based on an objective measure of size (*e.g.,* revenues or number of subscribers).[44] We propose that non-auctions FTEs will be classified as ''direct'' if the employee is in one of the four core bureaus; otherwise, the FTEs will be classified as ''indirect.'' [45] We propose that each regulatee within a fee category pays its proportionate share based on an objective measure (*e.g.,* revenues or number of subscribers). Our proposed calculations are illustrated in Table 1. The sources for the unit estimates that are used in these calculations are listed in Table 4.

18. We propose to allocate the total amount to be collected among the regulatory fee categories within each of the core bureaus and base the FY 2019 FTE allocations on a percentage that proportionally reflects the changes in FTEs in the core bureaus over the course of FY 2019.[46] We project approximately $25.39 million (7.49% of the total FTE allocation) in fees from International Bureau regulatees; $85.15 million (25.12% of the total FTE allocation) in fees from Wireless Telecommunications Bureau regulatees; $106.64 million (31.46% of the total FTE allocation) from Wireline Competition Bureau regulatees; and $121.82 million (35.93% of the total FTE allocation) from Media Bureau regulatees. We seek comment on our calculation for the FY 2019 FTEs.

19. The above allocations across the core bureaus are further allocated across the regulatory fee categories within each core bureau to reflect FTE use. The specific fee proposals and the specific

[36] 47 U.S.C. 159(d).

[37] *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* Report and Order, 19 FCC Rcd 11662, 11666, paragraph 11 (2004) (FY 2004 Report and Order). As the Commission explained, adjustments to the fee schedule due to increases or decreases in the amount of units or licensees may not implicate costs. *FY 2004 Report and Order,* 19 FCC Rcd at 11666, paragraph 9. Further, an attempt to adjust fees to mirror costs would be unworkable because any reduction in one category must be counterbalanced by increases in other categories. *Id.,* 19 FCC Rcd at 11666, paragraph 10.

[38] For example, governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations are exempt from regulatory fees under section 9(e)(1). 47 U.S.C. 159(e)(1); 47 CFR 1.1162.

[39] 47 CFR 1.1166.

[40] 47 U.S.C. 309(j)(8)(B) (providing that ''the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection.'')

[41] *See, e.g.,* FY 2019 Appropriation (''proceeds from the use of a competitive bidding system that may be retained and made available for obligation shall not exceed $130,284,000 for fiscal year 2019'').

[42] The phrase ''core'' bureaus was first adopted in the *FY 2012 NPRM* where the Commission explained that under (prior) section 9(b)(1)(A), the Commission was instructed to calculate the regulatory fees by determining the FTEs performing the activities enumerated in section 9(a)(1) within the Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau, and other offices of the Commission, and those bureaus had subsequently been renamed as the Wireless Telecommunications Bureau, Media Bureau, and Wireline Competition Bureau, and a new International Bureau had been formed. *FY 2012 NPRM,* 27 FCC Rcd at 8460, paragraph 5 & n.5. The Commission explained that ''[f]or simplicity and ease of reference, in this Notice we will refer to these four bureaus as the 'core' bureaus or the 'core licensing' bureaus.'' *Id.*

[43] The Commission observed in the *FY 2013 Report and Order* that ''the high percentage of the indirect FTEs is indicative of the fact that many Commission activities and costs are not limited to a particular fee category and instead benefit the Commission as a whole.'' *See FY 2013 Report and Order,* 28 FCC Rcd at 12357, paragraph 17. The new Office of Economics and Analytics consists of indirect FTEs.

[44] *See FY 2012 NPRM,* 27 FCC Rcd at 8461–62, paragraphs 8–11.

[45] The indirect FTEs are the non-auctions employees from the following bureaus and offices: Enforcement Bureau, Consumer & Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, part of the International Bureau, part of the Wireline Competition Bureau, Chairman and Commissioners' offices, Office of the Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, Office of Economics and Analytics, and Office of Administrative Law Judges.

[46] In the past, we have based the FTE count in the core bureaus on the number of FTEs in the beginning of the fiscal year. The Commission took two actions during FY 2019 that significantly impacted the numbers of FTEs in the core bureaus. First, staff reassignments to the Office of Economics and Analytics (OEA) were formally effective on December 11, 2018. *See Establishment of the Office of Economics and Analytics,* Order, 33 FCC Rcd 1539 (2018); FCC Opens Office Of Economics And Analytics, Federal Communications Commission News Release, December 11, 2018, *https://www.fcc.gov/document/fcc-opens-office-economics-and-analytics.* The creation of OEA resulted in the reassignment of 95 FTEs (of which 64 were not auctions-funded) to the new OEA as indirect FTEs. Second, staff reassignments for Equal Employment Opportunity enforcement moved seven FTEs from the Media Bureau to the Enforcement Bureau effective March 15, 2019. *See Transfer of EEO Audit and Enforcement Responsibilities to Enforcement Bureau,* Public Notice, DA 19–186 (released Mar. 15, 2019). Our calculation accounts for (1) the direct FTEs in the four core bureaus prior to the formation of OEA, (2) the direct FTEs in the four core bureaus following the formation of OEA, and (3) the direct FTEs in the four core bureaus following the reorganization that moved seven FTEs from the Media Bureau to the Enforcement Bureau, and thus from direct to indirect, on March 15, 2019.

mechanism for calculating them can be viewed in Tables 1, 2, 3, 4, and 5. Presented as a percentage of each bureau's allocation, our FY 2019 regulatory fee proposals can be viewed as follows: The International Bureau regulatory fees allocated across International Bureau services: Bearer Circuits (3.76%), Submarine Cable (24.85%), GSO Space Stations (61.61%), NGSO Space Stations (4.27%), and Earth Stations (5.51%); the Wireless Telecommunications Bureau regulatory fees allocated across Wireless services: CMRS (Cell and Messaging) (87.67%), BRS/LMDS (1.14%), and Multi-Year Wireless regulatory fees (11.19%); the Wireline Competition Bureau regulatory fees allocated across Wireline services: ITSP as 100% with the Toll Free Number regulatory fee subcategory as 12 cents per toll free number (which can be viewed as 3.71% of the total Wireline Competitive Bureau allocation this year); and the Media Bureau regulatory fees allocated across media services: Broadcast Radio Station fees (24.52%), Television (20.48%), and Cable TV Systems (including IPTV) and DBS (55%).

20. The Commission first provided full descriptions of the regulatory fee categories in the *1994 Report and Order*.[47] These categories have changed over time through rulemaking and Table 6 contains an enumeration of the regulatory fee categories the Commission used to assess regulatory fees for FY 2018. We propose to use the same categories for FY 2019 and seek comment on each fee category in Table 6.

### *C. Direct Broadcast Satellite (DBS) Regulatory Fees*

21. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. The two DBS providers, AT&T and DISH Network, are MVPDs.[48] The Media Bureau oversees the regulation of MVPDs, *i.e.,* regulated companies that make available for purchase, by subscribers or customers, multiple channels of video programming. The Media Bureau relies on a common pool of FTEs to carry out its oversight of MVPDs and other video distribution providers.[49] These responsibilities include market modifications, local-into-local, must-carry and retransmission consent disputes, program carriage and program access complaints, over-the-air reception device declaratory rulings and waivers, media rule modernization, media ownership, and proposed transactions.[50]

22. For Media Bureau activities in FY 2019, the Commission must collect $67.02 million in regulatory fees from cable TV systems, IPTV providers, and DBS operators. Based on our prior regulatory fee decisions, the Commission proposes to assess cable TV systems and IPTV providers at the same rate for regulatory fee purposes—with the total fee due being based on subscribership. The Commission has previously taken a different approach when it adopted Media Bureau-based regulatory fees on DBS operators. Specifically, in FY 2015, the Commission decided to phase in the new Media Bureau-based regulatory fee for DBS, starting at 12 cents per subscriber per year, as a subcategory in the cable television and IPTV category.[51] At the same time, the Commission committed to updating the regulatory fee rate in future years ''as necessary for ensuring an appropriate level of regulatory parity and considering the resources dedicated to this new regulatory fee subcategory.'' [52] Accordingly, the Commission increased the regulatory fee for DBS operators to 24 cents and then 36 cents per subscriber per year, with the regulatory fees paid by DBS operators reducing those paid by other MVPDs.[53] For FY 2018, the Commission continued the transition by increasing the DBS regulatory fee rate to 48 cents per subscriber per year.[54] The Commission explained that the DBS regulatory fee is based on the significant number of Media Bureau FTEs that work on MVPD issues that include DBS, ''not a particular number of FTEs focused solely on DBS'' or ''specific recent proceedings.'' [55]

23. The Commission previously concluded that the continued participation of DBS operators in Commission proceedings, and the use of a pool of Media Bureau FTEs to oversee MVPD issues, justifies increasing the DBS regulatory fee rate.[56] We seek comment on whether Media Bureau resources working on MVPD proceedings, including DBS, support continuing to phase in the DBS regulatory fee rate to bring it closer to the cable television/IPTV rate, which, for FY 2019, is proposed to be 86 cents per subscriber, per year. We recognize that DBS is not identical to cable television and IPTV; however, services that are not technologically identical nevertheless can warrant placement in the same regulatory fee category, *e.g.,* the ITSP category includes a range of carriers that are not regulated identically.[57] Cable television, IPTV, and DBS all receive oversight and regulation by Media Bureau FTEs working on MVPD issues.[58]

24. We propose to continue the phase in and set a DBS regulatory fee rate of 60 cents per subscriber per year, a 12-cent increase from the rate we used in FY 2018. In doing so, we invite comment concerning whether this continued ''phase in'' is still permissible under the RAY BAUM'S Act and whether this continued ''phase in'' is still good policy. In the alternative, we seek comment on including DBS fully in the cable television/IPTV rate, which would then be approximately 77 cents per subscriber per year, or adopting a different rate for DBS.

[47] *1994 Report and Order,* 9 FCC Rcd at 5344.

[48] MVPD is defined in section 602(13) of the Act, 47 U.S.C. 522(13).

[49] *Assessment and Collection of Regulatory Fees for Fiscal Year 2018, Report and Order and Order,* 33 FCC Rcd 8497, 8944, paragraph 8 (2018) (*FY 2018 Report and Order*).

[50] *FY 2018 Report and Order,* 33 FCC Rcd at 8944–8500, paragraph 8.

[51] *Assessment and Collection of Regulatory Fees for Fiscal Year 2015,* Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10277, paragraph 20 (2015) (*FY 2015 Report and Order*).

[52] *FY 2015 Report and Order,* 30 FCC Rcd at 10277, paragraph 20.

[53] *FY 2017 Report and Order,* 32 FCC Rcd at 7067, paragraph 20; *FY 2016 Report and Order,* 31 FCC Rcd at 10350, paragraph 30. In each of these years, the Commission also assessed a separate one-time fee on DBS operators on a per-subscriber basis to account for moving expenses.

[54] *FY 2018 NPRM,* 33 FCC Rcd at 5099, paragraph 19.

[55] *FY 2018 Report and Order,* 33 FCC Rcd at 8501, paragraph 11; *FY 2017 Report and Order,* 32 FCC Rcd at 7067–68, paragraphs 22–23; *see also FY 2015 NPRM,* 30 FCC Rcd at 5369, paragraph 33 (''We also reject the argument raised by DIRECTV and DISH that section 9 of the Act requires us to 'show that DBS and cable occupy a comparable number of FTEs.' '').

[56] *FY 2018 Report and Order,* 33 FCC Rcd at 8501, paragraph 11.

[57] ITSP, regulated by the Wireline Competition Bureau, includes interexchange carriers (IXCs), incumbent local exchange carriers (LECs), toll resellers, Voice over Internet Providers (VoIP), and other service providers, all of which involve different degrees of regulatory oversight.

[58] As the Commission observed in the FY 2018 Report and Order, ''Although a common pool of FTEs work on MVPD and related issues for DBS operators, IPTV providers, and cable TV systems, . . . we believe it is prudent to adopt our proposal to increase such rates by less than one cent per subscriber per month. . . .'' *FY 2018 Report and Order,* 33 FCC Rcd at 8500, paragraph 10. The Commission has consistently observed that the Media Bureau FTEs work on the regulation and oversight of MVPDs, that includes DBS, cable television, and IPTV. *See FY 2017 Report and Order,* 32 FCC Rcd at 7065, paragraph 19; *FY 2016 Report and Order,* 31 FCC Rcd at 10350, paragraph 30.

*D. Broadcast Television Stations*

25. Historically, regulatory fees for full-power television stations were based on the Nielsen Designated Market Area (DMA) groupings 1–10, 11–25, 26–50, 51–100, and remaining markets (DMAs 101–210). In the *FY 2018 NPRM,* we sought comment on whether using the actual population covered by the station's contours instead of using DMAs would more accurately reflect the actual market served by a full-power broadcast television station for purposes of assessing regulatory fees.[59] We proposed this change in methodology, which was consistent with the methodology used for AM and FM broadcasters and would better ''take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [60] We sought comment on whether, for FY 2019 and going forward, regulatory fees should be assessed for full-power broadcast television stations based on the actual population covered by the station's contour, instead of DMAs.[61] We also sought comment on whether to phase in the implementation of this methodology.[62]

26. In the *FY 2018 Report and Order,* we adopted the proposed methodology and stated that in order to facilitate the transition to this new fee structure, for FY 2019, we planned to adopt a fee based on an average of the historical DMA methodology and the population covered by a full-power broadcast station's contour for FY 2019.[63] The RAY BAUM'S Act instructs the Commission, when considering its annual review, to ''take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [64] Because the standard considered when adopting the proposed methodology for establishing full-power television station regulatory fees and the related transition in the *FY 2018 Report and Order* parallels the RAY BAUM'S Act standard, we tentatively conclude that the new methodology adopted last year is consistent with the RAY BAUM'S Act. Accordingly, consistent with our FY 2018 analysis, we propose FY 2019 fees for full-power broadcast television stations based on an average of the DMA methodology and the population covered by a full-power broadcast television station's contour. We also propose adopting a factor of .72 of one cent ($.007224) for FY 2019 full-power broadcast television station fees.[65] As in the *FY 2018 Report and Order,* the population data for broadcasters' service areas is extracted from the TVStudy database, based on a station's projected noise-limited service contour.[66] Table 3 lists this population data for each licensee. Table 3 also lists the DMA-based fee, the population-based fee (population multiplied by $.007224), and the resulting proposed regulatory fee for FY 2019 (*i.e.,* the average of the DMA-based fee and population-based fee) for each full-power broadcast television station, including each satellite station. We seek comment on these proposed fees.[67]

*E. Terrestrial and Satellite International Bearer Circuits (IBCs)*

27. The Commission previously sought comment on adopting a tiered methodology for assessing terrestrial and satellite international bearer circuit regulatory fees.[68] For FY 2018, the Commission assessed terrestrial and satellite common carrier and non-common carrier IBC regulatory fees on a per-circuit basis, using Gbps as the measurement rather than 64 kbps and stated in the *FY 2018 NPRM* that it expected to have sufficient circuit information from payors in September 2018 to consider a tiered rate structure for FY 2019.[69]

28. Now that we have FY 2018 circuit information for common carrier and non-common carrier terrestrial circuits, we believe that we should not move to a tiered structure for assessing IBC regulatory fees. Due to the wide range of numbers of circuits among carriers, particularly between the satellite and the terrestrial carriers—a tiered system, such as the two-tiered system previously proposed by CenturyLink,[70] would result in large increases in fees for the smaller carriers that do not appear to be ''reasonably related to the benefits provided to the payor of the fee[ ] by the Commission's activities,'' as required by section 9(d) of the Act.[71] More specifically, FY 2019 IBC fees that would be assessed on the 13 carriers currently in this fee category using the existing per-Gbps methodology would range from approximately $121 all the way to $355,000 per carrier, and condensing such a large range of fees to two tiers would require a substantial fee increase for the smaller carriers. To avoid such increases, we believe that we would need to adopt a complex tiering system of at least seven tiers, and several of these tiers would apply to only one carrier. We believe that such a complex tiered system would not be an improvement over the current methodology. Accordingly, we propose to continue to base non-common carrier and common carrier satellite and terrestrial IBC fees on the per Gbps rate in Table 2, which would be $121 for FY 2019. We seek comment on this proposal.

29. To the extent that commenters nevertheless believe that we should adopt a tiered structure for assessing IBC regulatory fees, we seek comment on what that structure should look like. For example, notwithstanding the concerns discussed above, should we adopt the following seven-tiered system, and if so, why?

- Systems with capacities less than 5 Gbps would pay a flat $150 fee.
- Systems with capacities equal to 5 Gbps or greater, but less than 50 Gbps, would pay a flat $750 fee.
- Systems with capacities equal to 50 Gbps or greater, but less than 250 Gbps, would pay a flat $11,200 fee.
- Systems with capacities equal to 250 Gbps or greater, but less than 750 Gbps, would pay a flat $45,000 fee.
- Systems with capacities equal to 750 Gbps or greater, but less than 1,200 Gbps, would pay a flat $135,000 fee.

[59] *FY 2018 NPRM,* 33 FCC Rcd at 5102, paragraph 28.

[60] *Id.* (quoting prior section 9(b)(1)(A)).

[61] *Id.*

[62] *Id.*

[63] *FY 2018 Report and Order,* 33 FCC Rcd at paragraph 14.

[64] 47 U.S.C. 159(d).

[65] The factor of .72 of one cent was derived by taking the revenue amount required from all television fee categories and dividing it by the total population count of all ''feeable'' call signs.

[66] 47 CFR 73.622(e).

[67] *See* 47 U.S.C. 159(d) (''the Commission shall by rule amend the schedule of regulatory fees established under this section if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'').

[68] *FY 2018 NPRM,* 33 FCC Rcd at 5100–5101, paragraphs 22–26.

[69] *FY 2018 NPRM,* 33 FCC Rcd at 5100–5101, paragraphs 22–26. In the *FY 2017 Report and Order,* the Commission concluded that IBCs should be assessed regulatory fees for non-common carrier, as well as common carrier, terrestrial circuits. *FY 2017 Report and Order,* 32 FCC Rcd at 7071–7072, paragraphs 34–35. This new fee was first assessed in FY 2018.

[70] Level 3 Communications (now, CenturyLink) proposed a ''flat, per provider fee, with a reduced amount for the smaller providers'' and argued that this ''two-tier methodology . . . is more efficient than a multi-tier methodology because the Commission need identify only one break point, and is less burdensome for providers because, once they pass the 'small provider' threshold, they will simply pay the 'large' fee category each year.'' *See* Comments of Level 3 Communications, MD Docket No. 16–166 at 3–4 (filed June 23, 2016; *see also* Comments of CenturyLink, MD Docket No. 18–175, at 2–3 (filed June 21, 2018). CenturyLink did not define the ''break point'' between small and large provider.

[71] 47 U.S.C. 159(d).

• Systems with capacities equal to 1,200 Gbps or greater, but less than 2,500 Gbps, would pay a flat $270,000 fee.

• Systems with capacities equal to or greater than 2,500 Gbps would pay a flat $345,000 fee.

30. For any tiered structure proposed, commenters should explain why their proposal would be an improvement over the current methodology and how the resulting fees would be ''reasonably related to the benefits provided to the payor of the fee[ ] by the Commission's activities.'' [72]

*F. De Minimis Regulatory Fees*

31. Section 9(e)(2) of the RAY BAUM'S Act provides the Commission with discretion to exempt a party from paying regulatory fees when the Commission determines that the cost of collection exceeds the amount collected.[73] Specifically, section 9(e)(2) provides that the Commission may exempt a party from paying regulatory fees if ''in the judgment of the Commission, the cost of collecting a regulatory fee established under this section from a party would exceed the amount collected from such party. . . .'' [74] Below, we seek comment on how to implement section 9(e)(2).

32. Since 1996, the Commission has provided a de minimis threshold for regulatory fee payments by exempting a regulatee from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities was less than the threshold for a given fiscal year. In adopting the first de minimis threshold for regulatory fees of $10.00, the Commission found that the cost of processing small payments resulted in a net loss to the U.S. Department of the Treasury.[75] The Commission subsequently revised the de minimis threshold in 2014 to $500.00 based in part on the costs of assessing and collecting regulatory fees from non-payers.[76] The Commission estimated that the cost of collection of an unpaid regulatory fee was at least $350.00.[77] The Commission explained that the increase in the de minimis threshold to $500.00 would provide financial relief to small entities and reduce the administrative burden on the Commission that would result from attempting to collect unpaid fees.[78] The Commission noted that smaller entities are at greater risk of missing regulatory fee deadlines and that many such entities are subject to little Commission oversight and regulation.[79] The Commission increased the de minimis threshold to $1,000.00 in 2017, observing that the cost of researching and creating a bill to send to a non-payor, and completing follow-up discussion and correspondence, had increased since the FY 2014 regulatory fee proceeding.[80] The Commission further found that the $350.00 estimate of collection costs in the *FY 2014 Report and Order* did not include the Commission's overhead costs.[81]

33. We view new section 9(e)(2) as codifying our authority to adopt a de minimis exemption. Section 9(e)(2) provides the Commission with discretion to exempt a ''party'' and to provide relief based on the cost of collection, both of which were factors considered in the existing de minimis exemption. The adoption of a monetary threshold applied against the total amount due in a given fiscal year continues to be, in our estimation, an efficient mechanism for reducing the Commission's costs in assessing and collecting regulatory fees.

34. We have analyzed an average cost of collection of a delinquent bill today and estimate that the cost to the Commission would exceed $1,000.00. For delinquent bills, the Commission's administrative process includes various functions such as gathering data from the bureaus and external sources (*e.g.,* the Universal Service Administrative Company (USAC)); validating data and preparing the data for billing; validating outstanding bills; preparing delinquency bills for transfer to collection agent for processing; discussing bills with regulatees when they call with questions; addressing bill disputes (*e.g.,* Centralized Receivable Service (CRS), U.S. Department of the Treasury, and FCC Help Desks); and processing payments received from CRS and U.S. Department of the Treasury. We thus seek comment on a section 9(e)(2) annual regulatory fee de minimis exemption of $1,000.00.

35. We also propose to exclude multi-year regulatory fees from the proposed section 9(e)(2) exemption. Historically, the de minimis threshold has applied only to annual regulatory fee filers and did not include regulatory fees paid through multi-year filings. The Commission excluded multi-year wireless fees from the de minimis exemption because the process of paying multi-year regulatory fees is a separate process from annual regulatory fee filings, and including multi-year fees in the threshold would significantly increase the Commission's administrative costs.[82] Section 9(e)(2) provides the Commission with discretion as to whether and how to provide this exemption; specifically, it states that the Commission ''may exempt'' a party from paying regulatory fees. We propose to exclude multi-year licenses from the new section 9(e)(2) exemption due to the administrative costs associated with implementing such an exemption for these fees. We seek comment on this proposal.

*G. Additional Regulatory Fee Reform*

36. We also seek comment on additional regulatory fee reform and ways to further improve our regulatory fee process to make it less burdensome for all entities. In particular, we seek comment on whether our fee setting methodologies could be improved or updated to ensure that our regulatory fees are more equitable or otherwise streamlined to make the fee schedule simpler. As part of this analysis, we seek comment on the costs and benefits of reforming our fee-setting process.

*H. Restatement of Certain Rules Fundamental to Waiver, Enforcement and Collection of Regulatory Fees*

37. The RAY BAUM'S Act moved and reformatted certain provisions of prior section 9 relating to waiver, enforcement and collection of regulatory fees.[83] Because these provisions are

[72] 47 U.S.C. 159(d).

[73] 47 U.S.C. 159(e)(2). Similarly, section 9(e)(1) exempts from regulatory fees governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations. Governmental entities, nonprofits, and amateur radio operators were exempt under the prior version of section 9(h). Under § 1.1162 of our rules, governmental entities, nonprofits, amateur radio operators, special emergency radio and public safety radio licensees, and noncommercial educational radio and television licensees are exempt from regulatory fees. 47 CFR 1.1162. The new section 9(e)(1) incorporated this exemption from our rules into the statute.

[74] 47 U.S.C. 159(e)(2).

[75] *Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* Notice of Proposed Rulemaking, 11 FCC Rcd 16515, 16530, paragraphs 50–51 (1996) (*FY 1996 NPRM*); *Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* Report and Order, 11 FCC Rcd 18774, 18792, paragraph 50 (1996) (*FY 1996 Report and Order*).

[76] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10775–76, paragraph 21 (2014) (*FY 2014 Report and Order*).

[77] *Id.*

[78] *Id.,* 29 FCC Rcd at 10775, paragraph 20.

[79] *Id.*

[80] *FY 2017 Report and Order,* 32 FCC Rcd at 7073, paragraph 40.

[81] *Id.*

[82] For example, all annual regulatory fees are due and payable in September of each fiscal year allowing for tracking by fee category and FRN within a single database (Fee Filer). The multi-year regulatory fees due dates are spread throughout each year and these fee categories are not included in the annual regulatory fee database.

[83] Compare old sections 9(c) and (d) with new section 9A(c) and (d). In addition to the rule

essential to the Commission's exercise of its statutory authority here, we take this opportunity to explain essential aspects of the statute and also note that our application of these provisions remains unchanged.

1. Waiver, Reduction and Deferral of Regulatory Fees

38. Section 9A of the Communications Act, as amended by the RAY BAUM'S Act, permits the Commission to waive, reduce, or defer payment of a regulatory fee and associated interest charges and penalties for good cause if the waiver, reduction, or deferral (collectively, waiver or waive) would serve the public interest.[84] The Commission interprets this provision narrowly to permit only those waivers ''unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services for a particular regulatee.'' [85] Within this standard, the Commission recognizes that in exceptional circumstances, financial hardship may justify waiving and/or deferring a party's regulatory fees.[86] Financial inability, however, must be conclusively proven and the burden of proof for doing so lies solely with the regulatee seeking relief. Mere allegations of financial loss will not support a waiver request. Rather, as the Commission has stated, ''it is incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.'' [87] The Commission has suggested that documents that may be relevant to prove financial inability include balance sheets and profit and loss statements (audited if available), twelve month cash flow projections (with an explanation of how calculated), a list of officers and highest paid employees other than officers, and each individual's compensation, or similar information.[88] We emphasize, however, that the foregoing list of documents is not exhaustive and it is up to each regulatee to determine the documentation required to prove financial hardship in its own case.

39. The Commission has previously stated that with respect to waiver, reduction, and deferral requests based on financial hardship, the Commission will base its decision on the information submitted with the request as well as ''any additional information available in the Commission's records.'' [89] We are not bound, nor is it an efficient use of the Commission's time, to search our records for information or documents that might be relevant to a request for waiver, reduction or deferral of a regulatory fee. Therefore, we propose to eliminate consideration of information and documents available in our records and instead, require that any party seeking regulatory fee relief, regardless of the basis for its request, must include with its request all documents and information the requestor believes to be relevant to prove its case, regardless of whether or not such documentation or information exists in Commission records.[90]

40. The Commission frequently receives requests to waive regulatory fees owed by regulatees in bankruptcy or receivership, who cite the fact of the bankruptcy or receivership as proof of the regulatee's financial hardship, justifying waiver. Here we wish to emphasize the standard to which the Commission hews in determining whether to grant relief in such cases. While the Commission recognizes that the fact of a bankruptcy or receivership filing may be sufficient evidence of financial hardship, we consider such cases individually,[91] taking into account a number of other factors that are relevant to the question of whether the regulatee lacks sufficient funds to pay the regulatory fees and to maintain its service to the public. Although the factors we consider are case-specific, they might include for example, whether the regulatee intends to reorganize or liquidate in bankruptcy, the reason for the bankruptcy or receivership filing, the regulatee's ability or plan to obtain post-petition financing, the number, type and amount of other claims asserted against the regulatee in the bankruptcy or receivership case, and the priority accorded under bankruptcy or receivership law to the Commission's regulatory fee claim.

41. We also remind regulatees that requests to waive their regulatory fees must be properly filed by the date on which such fees are due.[92]

2. Enforcement

42. *Late payment penalty and interest.* Regulatory fee payments must be paid by their due date. Section 9A(c)(1) of the Act requires the Commission to impose a late payment penalty of 25 percent of unpaid regulatory fee debt, to be assessed on the first day following the deadline for payment of the fees. Section 9A(c)(2) of the Act requires the Commission to assess interest at the rate set forth in 31 U.S.C. 3717 on all unpaid regulatory fees, including the 25 percent penalty, until the debt is paid in full.[93] The RAY BAUM'S Act, however, prohibits the Commission from assessing the administrative costs of collecting delinquent regulatory fee debt.[94] Thus, while section 9A(c) of the Act leaves intact those parts of § 1.1940 of the Commission's rules pertaining to penalty and interest charges, the Commission will no longer assess administrative costs on delinquent regulatory fee debts.[95]

43. *Collection and offset.* The Commission will pursue collection of all past due regulatory fees, including penalties and accrued interest, using collection remedies available to it under the Debt Collection Improvement Act of 1996, its implementing regulations and federal common law. These remedies include offsetting regulatory fee debt against monies owed to the debtor by the Commission, and referral of the debt to the United States Treasury for further collection efforts, including centralized offset against monies other federal agencies may owe the debtor.[96]

44. *Red light.* Failure to timely pay regulatory fees, penalties or accrued interest will also subject regulatees to the Commission's ''red light'' rule, which generally requires the Commission to withhold action on and subsequently dismiss applications and other requests for benefits by any entity owing debt, including regulatory fee debt, to the Commission.[97]

45. *Revocation.* In addition to financial penalties, section 9(c)(3) of the

changes discussed below, we propose to delete § 1.1163 of the Commission's rules as redundant given the statutory language and plan to adopt changes in our Report and Order to § 1.1166 of the Commission's rules that track the revised statutory language.

[84] *Id.*

[85] *FY 1994 Report and Order,* 9 FCC Rcd at 5344, paragraph 29.

[86] *Implementation of Section 9 of the Communications Act,* Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761–12762, paragraphs 12–14 (1995).

[87] *Id.* at 12762, paragraph 13.

[88] *Id.*

[89] *FY 1994 Report and Order,* 9 FCC Rcd at 5346.

[90] We would except from this requirement administrative and judicial decisions and orders, for which a citation would be sufficient.

[91] *FY 2003 Report and Order,* 18 FCC Rcd. at 15990, paragraph 13.

[92] *FY 1994 Report and Order,* 9 FCC Rcd at 5345, paragraph 34.

[93] 47 U.S.C. 159A(c)(1).

[94] Section 9A(c)(2) provides that ''section 3717 shall not otherwise apply to such a fee or penalty.''

[95] See *FY 2018 Report and Order,* 33 FCC Rcd at 8502–8503, paragraphs 16–17 (adopting this amendment to § 1.1940 of our rules to conform to the RAY BAUM'S Act).

[96] 31 U.S.C. 3701 *et seq.;* 31 CFR 901 *et seq.;* 47 CFR 1.1901 et *seq.*

[97] *See* 47 CFR 1.1910.

Act,[98] and § 1.1164(f) of the Commission's rules [99] grant the Commission the authority to revoke authorizations for failure to pay regulatory fees in a timely fashion. Should a fee delinquency not be rectified in a timely manner the Commission may require the licensee to file with documented evidence within sixty (60) calendar days that full payment of all outstanding regulatory fees has been made, plus any associated penalties as calculated by the Secretary of Treasury in accordance with § 1.1164(a) of the Commission's rules,[100] or show cause why the payment is inapplicable or should be waived or deferred. Failure to provide such evidence of payment or to show cause within the time specified may result in revocation of the station license.[101]

## V. Procedural Matters

46. Included below are procedural items as well as our current payment and collection methods. We include these payments and collection procedures here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

### *A. Payment of Regulatory Fees*

47. *Credit Card Transaction Levels.* Since June 1, 2015, in accordance with U.S. Treasury Announcement No. A–2014–04 (July 2014), the highest amount that can be charged on a credit card for transactions with federal agencies is $24,999.99.[102] Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in Fee Filer. Further details will be provided regarding payment methods and procedures at the time of FY 2019 regulatory fee collection in Fact Sheets, *https://www.fcc.gov/regfees.*

*48. Payment Methods.* Pursuant to an Office of Management and Budget (OMB) directive,[103] the Commission is moving towards a paperless environment, extending to disbursement and collection of select federal government payments and receipts.[104] In 2015, the Commission stopped accepting checks (including cashier's checks and money orders) and the accompanying hardcopy forms (*e.g.,* Forms 159, 159–B, 159–E, 159–W) for the payment of regulatory fees.[105] During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov,*[106] ACH, debit card,[107] or by wire transfer. Additional payment instructions are posted on the Commission's website at *http://transition.fcc.gov/fees/regfees.html.* The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, a Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Federal Communications Commission at (202) 418–2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html.*

49. *Standard Fee Calculations and Payment Dates.*—The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2018 for AM/FM radio stations, VHF/UHF broadcast television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2018.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2018. In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.[108] For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in § 52.103 of the Commission's rules.[109] The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2018.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2018. The number of subscribers, units, or telephone numbers on December 31, 2018 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees:* The first eight regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed or a new license is

[98] 47 U.S.C. 159(c)(3).

[99] 47 CFR 1.1164(f).

[100] 47 CFR 1.1164(a).

[101] *See, e.g., Cortaro Broadcasting Corp.,* Order to Pay or Show Cause, 32 FCC Rcd 9336 (MB 2017).

[102] Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and Fiscal Service rules. An amount owed that exceeds the Fiscal Service maximum dollar amount, $24,999.99, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the Fiscal Service maximum dollar amount may not be split into two or more transactions over multiple days by using one or more cards.

[103] Office of Management and Budget (OMB) Memorandum M–10–06, Open Government Directive, Dec. 8, 2009; *see also http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov.*

[104] *See* U.S. Department of the Treasury, Open Government Plan 2.1, September 2012.

[105] *FY 2015 Report and Order,* 30 FCC Rcd at 10282–83, paragraph 35. *See* 47 CFR 1.1158.

[106] In accordance with U.S. Treasury Financial Manual Announcement No. A–2014–04 (July 2014), the amount that may be charged on a credit card for transactions with federal agencies has been reduced to $24,999.99.

[107] In accordance with U.S. Treasury Financial Manual Announcement No. A–2012–02, the maximum dollar-value limit for debit card transactions is eliminated. Only Visa and MasterCard branded debit cards are accepted by *Pay.gov.*

[108] Audio bridging services are toll teleconferencing services.

[109] 47 CFR 52.103.

obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2019.

• *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2018.[110] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2018. In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2018. In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for (1) earth stations and (2) geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2018. In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services (Submarine Cable Systems):* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2018. In instances where a license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2019 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services (Terrestrial and Satellite Services):* Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2018 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2018. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits.[111] In instances where a permit or license is transferred or assigned after October 1, 2018, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the IBC allocation in FY 2019 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

*B. Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments*

50. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[112] This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer) along with the carrier's Operating Company Numbers (OCNs).

51. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.[113] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

52. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2018), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

## VI. Tables

Regulatory fees for the first seven fee categories below shaded are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

TABLE 1—CALCULATION OF FY 2019 REVENUE REQUIREMENTS AND PRO-RATA FEES

| Fee category | FY 2019 payment units | Yrs | FY 2018 revenue estimate | Pro-rated FY 2019 revenue requirement | Computed FY 2019 regulatory fee | Rounded FY 2019 reg. fee | Expected FY 2019 revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (Exclusive Use) | 450 | 10 | $85,000 | $112,500 | $25.00 | $25 | $112,500 |

[110] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2018, rather than on a count as of December 31, 2018.

[111] We encourage terrestrial and satellite service providers to seek guidance from the International Bureau's Telecommunications and Analysis Division to verify their particular IBC reporting processes to ensure that their calculation methods comply with our rules.

[112] *See FY 2005 Report and Order,* 20 FCC Rcd at 12264, paragraphs 38–44.

[113] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

TABLE 1—CALCULATION OF FY 2019 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

| Fee category | FY 2019 payment units | Yrs | FY 2018 revenue estimate | Pro-rated FY 2019 revenue requirement | Computed FY 2019 regulatory fee | Rounded FY 2019 reg. fee | Expected FY 2019 revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (Shared use) | 12,400 | 10 | 1,250,000 | 1,239,999 | 10.00 | 10 | 1,240,000 |
| Microwave | 10,000 | 10 | 1,937,500 | 2,500,000 | 25.00 | 25 | 2,500,000 |
| Marine (Ship) | 7,100 | 10 | 1,072,500 | 1,065,000 | 15.00 | 15 | 1,065,000 |
| Aviation (Aircraft) | 4,500 | 10 | 400,000 | 450,000 | 10.00 | 10 | 450,000 |
| Marine (Coast) | 60 | 10 | 30,000 | 24,000 | 40.00 | 40 | 24,000 |
| Aviation (Ground) | 1,100 | 10 | 200,000 | 220,000 | 20.00 | 20 | 220,000 |
| AM Class A [1] | 61 | 1 | 266,175 | 285,628 | 4,682 | 4,675 | 285,175 |
| AM Class B [1] | 1,389 | 1 | 3,274,450 | 3,543,984 | 2,551 | 2,550 | 3,541,950 |
| AM Class C [1] | 773 | 1 | 1,177,200 | 1,268,909 | 1,642 | 1,650 | 1,275,450 |
| AM Class D [1] | 1,256 | 1 | 3,907,800 | 4,192,065 | 3,338 | 3,350 | 4,207,600 |
| FM Classes A, B1 & C3 [1] | 2,904 | 1 | 8,152,450 | 8,809,970 | 3,038 | 3,025 | 8,784,600 |
| FM Classes B, C, C0, C1 & C2 [1] | 3,075 | 1 | 10,009,600 | 10,794,578 | 3,510 | 3,500 | 10,762,500 |
| AM Construction Permits [2] | 3 | 1 | 4,950 | 1,980 | 660 | 660 | 1,980 |
| FM Construction Permits [2] | 67 | 1 | 105,185 | 77,050 | 1,150 | 1,150 | 77,050 |
| Satellite TV | 125 | 1 | 189,000 | 202,847 | 1,623 | 1,625 | 203,125 |
| Digital TV Mkt 1–10 | 143 | 1 | 7,164,000 | 7,722,293 | 54,002 | 54,000 | 7,722,000 |
| Digital TV Mkt 11–25 | 140 | 1 | 5,243,000 | 5,693,047 | 40,665 | 40,675 | 5,694,500 |
| Digital TV Mkt 26–50 | 186 | 1 | 4,729,725 | 5,052,126 | 27,162 | 27,150 | 5,049,900 |
| Digital TV Mkt 51–100 | 291 | 1 | 3,617,750 | 3,939,717 | 13,539 | 13,550 | 3,943,050 |
| Digital TV Remaining Markets | 375 | 1 | 1,594,900 | 1,668,991 | 4,451 | 4,450 | 1,668,750 |
| Digital TV Construction Permits [2] | 3 | 1 | 12,300 | 13,350 | 4,450 | 4,450 | 13,350 |
| LPTV/Translators/Boosters/Class A TV | 4,100 | 1 | 1,515,820 | 1,622,772 | 345.3 | 345 | 1,621,500 |
| CARS Stations | 175 | 1 | 188,125 | 201,018 | 1,218 | 1,225 | 202,125 |
| Cable TV Systems, including IPTV | 57,000,000 | 1 | 46,970,000 | 48,767,045 | .8556 | .86 | 49,020,000 |
| Direct Broadcast Satellite (DBS) | 30,000,000 | 1 | 15,360,000 | 18,011,242 | .6004 | .60 | 18,000,000 |
| Interstate Telecommunication Service Providers | $32,200,000,000 | 1 | 100,686,000 | 102,695,189 | 0.003189 | 0.00319 | 102,718,000 |
| Toll Free Numbers | 33,000,000 | 1 | 3,320,000 | 3,954,211 | 0.1198 | 0.12 | 3,960,000 |
| CMRS Mobile Services (Cellular/Public Mobile) | 421,000,000 | 1 | 80,800,000 | 78,424,217 | 0.1863 | 0.19 | 79,990,000 |
| CMRS Messag. Services | 1,900,000 | 1 | 80,000 | 152,000 | 0.0800 | 0.080 | 152,000 |
| BRS/ [3] | 1,260 | 1 | 705,000 | 869,400 | 690 | 690 | 869,400 |
| LMDS | 140 | 1 | 240,000 | 96,600 | 690 | 690 | 96,600 |
| Per Gbps circuit Int'l Bearer Circuits—Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common) | 7,440 | 1 | 685,102 | 900,785 | 121.073 | 121 | 900,240 |
| Submarine Cable Providers (See chart at bottom of Table 2) [4] | 38.00 | 1 | 4,959,035 | 6,363,608 | 167,463 | 167,475 | 6,364,050 |
| Earth Stations | 3,300 | 1 | 1,105,000 | 1,399,050 | 424 | 425 | 1,402,500 |
| Space Stations (Geostationary) | 98 | 1 | 12,401,450 | 15,643,457 | 159,627 | 159,625 | 15,643,250 |
| Space Stations (Non-Geostationary) | 7 | 1 | 859,425 | 1,084,200 | 154,886 | 154,875 | 1,084,125 |
| ****** Total Estimated Revenue to be Collected | | | 324,365,671 | 339,062,828 | | | 340,866,270 |
| ****** Total Revenue Requirement | | | 322,035,000 | 339,000,000 | | | 339,000,000 |
| Difference | | | 2,330,671 | 62,828 | | | 1,866,270 |

**Notes on Table 1:**

[1] The fee amounts listed in the column entitled ''Rounded New FY 2019 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2019 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 2.

[2] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[3] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, paragraph 6 (2004).

[4] The chart at the end of Table 2 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009).

Regulatory fees for the first eight fee categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

TABLE 2—PROPOSED REGULATORY FEES FOR FY 2019

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 25 |
| Microwave (per license) (47 CFR part 101) | 25 |
| Marine (Ship) (per station) (47 CFR part 80) | 15 |
| Marine (Coast) (per license) (47 CFR part 80) | 40 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 10 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 10 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 10 |

TABLE 2—PROPOSED REGULATORY FEES FOR FY 2019—Continued

| Fee category | Annual regulatory fee (U.S. $'s) |
|---|---|
| Aviation (Ground) (per license) (47 CFR part 87) | 20 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .19 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27) | 690 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 690 |
| AM Radio Construction Permits | 660 |
| FM Radio Construction Permits | 1,150 |
| AM and FM Broadcast Radio Station Fees | See Table Below |
| Digital TV (47 CFR part 73) VHF and UHF Commercial | (*) |
| Construction Permits | 4,450 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 345 |
| CARS (47 CFR part 78) | 1,225 |
| Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV | .86 |
| Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act) | .60 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00319 |
| Toll Free (per toll free subscriber) (47 C.F.R. 52.101 (f) of the rules) | .12 |
| Earth Stations (47 CFR part 25) | 425 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 159,625 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 154,875 |
| International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit) | 121 |
| Submarine Cable Landing Licenses Fee (per cable system) | See Table Below |

(*) See Table 3; *also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees*.

PROPOSED FY 2019 RADIO STATION REGULATORY FEES

| Population served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| <=25,000 | $1,000 | $760 | $660 | $725 | $1,150 | $1,325 |
| 25,001–75,000 | 1,575 | 1,150 | 990 | 1,000 | 1,725 | 2,000 |
| 75,001–150,000 | 2,375 | 1,700 | 1,475 | 1,625 | 2,600 | 2,975 |
| 150,001–500,000 | 3,550 | 2,575 | 2,225 | 2,450 | 3,875 | 4,475 |
| 500,001–1,200,000 | 5,325 | 3,850 | 3,350 | 3,675 | 5,825 | 6,700 |
| 1,200,001–3,000,000 | 7,975 | 5,775 | 5,025 | 5,500 | 8,750 | 10,075 |
| 3,000,001–6,000,000 | 11,950 | 8,650 | 7,525 | 8,250 | 13,100 | 15,100 |
| >6,000,000 | 17,950 | 13,000 | 11,275 | 12,400 | 19,650 | 22,650 |

FY 2019 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

| Submarine cable systems (capacity as of December 31, 2018) | Proposed fee amount for FY 2019 |
|---|---|
| Less than 50 Gbps | $12,575 |
| 50 Gbps or greater, but less than 250 Gbps | 25,150 |
| 250 Gbps or greater, but less than 1,000 Gbps | 50,300 |
| 1,000 Gbps or greater, but less than 4,000 Gbps | 100,600 |
| 4,000 Gbps or greater | 201,225 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KAAL | 52,021 | $376 | $4,450 | $2,413 |
| KAAS–TV | 220,262 | 1,591 | 13,550 | 7,571 |
| KABB | 2,474,296 | 17,875 | 27,150 | 22,513 |
| KABC–TV | 17,791,505 | 128,532 | 54,000 | 91,266 |
| KABY–TV | 137,331 | 992 | 4,450 | 2,721 |
| KAUT–TV | 1,608,476 | 11,620 | 27,150 | 19,385 |
| KAUZ–TV | 381,671 | 2,757 | 4,450 | 3,604 |
| KAVU–TV | 320,484 | 2,315 | 4,450 | 3,383 |
| KAWE | 136,033 | 983 | 40,675 | 20,829 |
| KAYU–TV | 809,464 | 5,848 | 13,550 | 9,699 |
| KADN–TV | 877,965 | 6,343 | 4,450 | 5,396 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KAEF–TV | 138,085 | 998 | 4,450 | 2,724 |
| KAII–TV | 188,810 | 1,364 | 13,550 | 7,457 |
| KAIL | 1,967,744 | 14,216 | 13,550 | 13,883 |
| KAIT | 861,149 | 6,221 | 4,450 | 5,336 |
| KAJB | 383,886 | 2,773 | 4,450 | 3,612 |
| KAKE | 803,937 | 5,808 | 13,550 | 9,679 |
| KAKW–DT | 2,615,956 | 18,899 | 27,150 | 23,024 |
| KALB–TV | 943,307 | 6,815 | 4,450 | 5,632 |
| KALO | 948,683 | 6,854 | 13,550 | 10,202 |
| KAZD | 6,747,915 | 48,749 | 4,450 | 26,600 |
| KAZQ | 1,097,010 | 7,925 | 27,150 | 17,538 |
| KAZT–TV | 436,925 | 3,157 | 40,675 | 21,916 |
| KBAK–TV | 1,510,400 | 10,912 | 4,450 | 7,681 |
| KBCA | 463,075 | 3,345 | 4,450 | 3,898 |
| KBCB | 1,256,193 | 9,075 | 40,675 | 24,875 |
| KBCW | 8,020,424 | 57,943 | 54,000 | 55,971 |
| KBFD–DT | 953,207 | 6,886 | 13,550 | 10,218 |
| KBIM–TV | 205,701 | 1,486 | 27,150 | 14,318 |
| KBJR–TV | 275,585 | 1,991 | 4,450 | 3,220 |
| KAMC | 391,526 | 2,829 | 4,450 | 3,639 |
| KAME–TV | 611,981 | 4,421 | 4,450 | 4,436 |
| KAMR–TV | 366,476 | 2,648 | 4,450 | 3,549 |
| KAPP | 319,797 | 2,310 | 4,450 | 3,380 |
| KARD | 703,234 | 5,080 | 4,450 | 4,765 |
| KARE | 3,924,944 | 28,355 | 40,675 | 34,515 |
| KARK–TV | 1,212,038 | 8,756 | 13,550 | 11,153 |
| KARZ–TV | 1,186,579 | 8,572 | 13,550 | 11,061 |
| KASA–TV | 1,161,789 | 8,393 | 27,150 | 17,772 |
| KASN | 1,117,403 | 8,073 | 13,550 | 10,811 |
| KBLN–TV | 297,384 | 2,148 | 4,450 | 3,299 |
| KBLR | 1,964,979 | 14,196 | 27,150 | 20,673 |
| KBMT | 743,009 | 5,368 | 4,450 | 4,909 |
| KBMY | 119,993 | 867 | 4,450 | 2,658 |
| KBOI–TV | 716,754 | 5,178 | 4,450 | 4,814 |
| KBRR | 149,869 | 1,083 | 4,450 | 2,766 |
| KBSD–DT | 155,012 | 1,120 | 13,550 | 7,335 |
| KBSH–DT | 102,781 | 743 | 13,550 | 7,146 |
| KBSI | 752,366 | 5,435 | 13,550 | 9,493 |
| KBSL–DT | 49,814 | 360 | 13,550 | 6,955 |
| KASW | 4,170,505 | 30,129 | 40,675 | 35,402 |
| KASY–TV | 1,140,916 | 8,242 | 27,150 | 17,696 |
| KATC | 1,348,897 | 9,745 | 4,450 | 7,097 |
| KATN | 97,466 | 704 | 4,450 | 2,577 |
| KATU | 2,978,043 | 21,514 | 40,675 | 31,095 |
| KATV | 1,257,777 | 9,087 | 13,550 | 11,318 |
| KCBD | 414,804 | 2,997 | 4,450 | 3,723 |
| KDKA–TV | 3,611,796 | 26,093 | 40,675 | 33,384 |
| KDKF | 71,413 | 516 | 4,450 | 2,483 |
| KDLH | 263,422 | 1,903 | 4,450 | 3,177 |
| KBSV | 1,352,166 | 9,769 | 40,675 | 25,222 |
| KBTV–TV | 734,008 | 5,303 | 4,450 | 4,876 |
| KBTX–TV | 4,048,516 | 29,248 | 13,550 | 21,399 |
| KBVO | 1,498,015 | 10,822 | 27,150 | 18,986 |
| KBVU | 135,249 | 977 | 4,450 | 2,714 |
| KBZK | 116,485 | 842 | 4,450 | 2,646 |
| KCAL–TV | 17,734,310 | 128,119 | 54,000 | 91,060 |
| KCAU–TV | 783,655 | 5,661 | 4,450 | 5,056 |
| KCBA | 3,094,778 | 22,358 | 4,450 | 13,404 |
| KCBS–TV | 17,595,935 | 127,120 | 54,000 | 90,560 |
| KDLO–TV | 208,354 | 1,505 | 4,450 | 2,978 |
| KDLT–TV | 645,391 | 4,663 | 4,450 | 4,556 |
| KDLV–TV | 96,873 | 700 | 4,450 | 2,575 |
| KDMD | 374,951 | 2,709 | 4,450 | 3,579 |
| KDNL–TV | 2,987,219 | 21,581 | 40,675 | 31,128 |
| KDOC–TV | 17,564,367 | 126,891 | 54,000 | 90,446 |
| KDRV | 519,706 | 3,755 | 4,450 | 4,102 |
| KDSM–TV | 1,096,220 | 7,919 | 13,550 | 10,735 |
| KDTV–DT | 7,921,124 | 57,225 | 54,000 | 55,613 |
| KCBY–TV | 89,156 | 644 | 4,450 | 2,547 |
| KCCI | 1,102,130 | 7,962 | 13,550 | 10,756 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KCCW–TV | 284,280 | 2,054 | 40,675 | 21,364 |
| KCDO–TV | 2,798,103 | 20,215 | 40,675 | 30,445 |
| KCEB | 1,163,228 | 8,404 | 13,550 | 10,977 |
| KCEC | 3,874,159 | 27,988 | 40,675 | 34,332 |
| KCEN–TV | 1,795,767 | 12,973 | 13,550 | 13,262 |
| KCET | 16,875,019 | 121,911 | 54,000 | 87,956 |
| KCFW–TV | 148,162 | 1,070 | 4,450 | 2,760 |
| KDTX–TV | 6,593,327 | 47,633 | 54,000 | 50,816 |
| KDVR | 3,430,717 | 24,785 | 40,675 | 32,730 |
| KECI–TV | 235,954 | 1,705 | 4,450 | 3,077 |
| KECY–TV | 399,372 | 2,885 | 4,450 | 3,668 |
| KELO–TV | 705,364 | 5,096 | 4,450 | 4,773 |
| KENS | 2,493,265 | 18,012 | 27,150 | 22,581 |
| KENV–DT | 47,220 | 341 | 27,150 | 13,746 |
| KEPR–TV | 453,259 | 3,275 | 4,450 | 3,862 |
| KERO–TV | 1,285,357 | 9,286 | 4,450 | 6,868 |
| KESQ–TV | 917,395 | 6,628 | 4,450 | 5,539 |
| KCHF | 1,118,671 | 8,082 | 27,150 | 17,616 |
| KCIT | 382,477 | 2,763 | 4,450 | 3,607 |
| KCLO–TV | 138,413 | 1,000 | 4,450 | 2,725 |
| KCNC–TV | 3,794,400 | 27,412 | 40,675 | 34,044 |
| KCNS | 8,048,427 | 58,145 | 54,000 | 56,072 |
| KCOP–TV | 17,976,764 | 129,871 | 54,000 | 91,935 |
| KCOY–TV | 664,655 | 4,802 | 4,450 | 4,626 |
| KCPM | 90,266 | 652 | 4,450 | 2,551 |
| KCPQ | 4,439,875 | 32,075 | 40,675 | 36,375 |
| KCRA–TV | 10,612,483 | 76,668 | 40,675 | 58,672 |
| KETD | 3,098,889 | 22,388 | 40,675 | 31,531 |
| KETH–TV | 6,088,821 | 43,988 | 54,000 | 48,994 |
| KETK–TV | 1,031,567 | 7,452 | 4,450 | 5,951 |
| KETV | 1,355,714 | 9,794 | 13,550 | 11,672 |
| KEYC–TV | 544,900 | 3,937 | 4,450 | 4,193 |
| KEYE–TV | 2,588,622 | 18,701 | 27,150 | 22,926 |
| KEYT–TV | 1,419,564 | 10,255 | 4,450 | 7,353 |
| KEYU | 339,348 | 2,452 | 4,450 | 3,451 |
| KEZI | 885,667 | 6,398 | 4,450 | 5,424 |
| KFBB–TV | 93,519 | 676 | 4,450 | 2,563 |
| KCRG–TV | 1,180,361 | 8,527 | 13,550 | 11,039 |
| KCSG | 174,814 | 1,263 | 27,150 | 14,206 |
| KCTV | 2,547,456 | 18,404 | 27,150 | 22,777 |
| KCVU | 630,068 | 4,552 | 4,450 | 4,501 |
| KCWE | 2,460,172 | 17,773 | 27,150 | 22,462 |
| KCWI–TV | 1,043,811 | 7,541 | 13,550 | 10,545 |
| KCWV | 207,398 | 1,498 | 4,450 | 2,974 |
| KCWX | 3,961,044 | 28,616 | 27,150 | 27,883 |
| KCWY–DT | 79,948 | 578 | 4,450 | 2,514 |
| KDAF | 6,648,507 | 48,031 | 54,000 | 51,016 |
| KFCT | 795,114 | 5,744 | 40,675 | 23,210 |
| KFDA–TV | 385,064 | 2,782 | 4,450 | 3,616 |
| KFDM | 732,665 | 5,293 | 4,450 | 4,872 |
| KICU–TV | 8,233,041 | 59,479 | 54,000 | 56,739 |
| KIDK | 305,509 | 2,207 | 4,450 | 3,329 |
| KIDY | 116,614 | 842 | 4,450 | 2,646 |
| KIEM–TV | 174,390 | 1,260 | 4,450 | 2,855 |
| KIFI–TV | 325,086 | 2,349 | 4,450 | 3,399 |
| KIII | 569,864 | 4,117 | 4,450 | 4,283 |
| KDBC–TV | 1,015,564 | 7,337 | 13,550 | 10,443 |
| KDCU–DT | 796,251 | 5,752 | 13,550 | 9,651 |
| KDEN–TV | 3,376,799 | 24,395 | 40,675 | 32,535 |
| KDFI | 6,605,830 | 47,723 | 54,000 | 50,861 |
| KDFW | 6,658,976 | 48,107 | 54,000 | 51,053 |
| KFDX–TV | 381,703 | 2,758 | 4,450 | 3,604 |
| KFFV | 3,783,380 | 27,333 | 40,675 | 34,004 |
| KFFX–TV | 409,952 | 2,962 | 4,450 | 3,706 |
| KFJX | 515,708 | 3,726 | 4,450 | 4,088 |
| KIKU | 953,896 | 6,891 | 13,550 | 10,221 |
| KILM | 17,058,741 | 123,239 | 54,000 | 88,619 |
| KIMA–TV | 308,604 | 2,229 | 4,450 | 3,340 |
| KIMT | 702,390 | 5,074 | 4,450 | 4,762 |
| KINC | 2,002,066 | 14,464 | 27,150 | 20,807 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KING–TV | 4,063,674 | 29,357 | 40,675 | 35,016 |
| KINT–TV | 1,015,582 | 7,337 | 13,550 | 10,443 |
| KION–TV | 2,400,317 | 17,341 | 4,450 | 10,895 |
| KIRO–TV | 95,004 | 686 | 40,675 | 20,681 |
| KITV | 953,207 | 6,886 | 13,550 | 10,218 |
| KFMB–TV | 3,947,735 | 28,520 | 27,150 | 27,835 |
| KFNB | 80,382 | 581 | 4,450 | 2,515 |
| KFNE | 54,988 | 397 | 4,450 | 2,424 |
| KFNR | 10,988 | 79 | 4,450 | 2,265 |
| KFOR–TV | 1,639,592 | 11,845 | 27,150 | 19,498 |
| KFOX–TV | 1,023,999 | 7,398 | 13,550 | 10,474 |
| KFPH–DT | 347,579 | 2,511 | 40,675 | 21,593 |
| KFPX–TV | 963,969 | 6,964 | 13,550 | 10,257 |
| KFQX | 186,473 | 1,347 | 4,450 | 2,899 |
| KFRE–TV | 1,721,275 | 12,435 | 13,550 | 12,993 |
| KIVI–TV | 710,819 | 5,135 | 4,450 | 4,793 |
| KJJC | 80,732 | 583 | 4,450 | 2,517 |
| KJLA | 17,653,508 | 127,535 | 54,000 | 90,768 |
| KJRH–TV | 1,416,108 | 10,230 | 13,550 | 11,890 |
| KJRR | 45,515 | 329 | 4,450 | 2,389 |
| KJRW | 137,375 | 992 | 4,450 | 2,721 |
| KJTL | 379,594 | 2,742 | 4,450 | 3,596 |
| KJTV–TV | 409,786 | 2,960 | 4,450 | 3,705 |
| KJUD | 31,229 | 226 | 4,450 | 2,338 |
| KJZZ–TV | 2,388,054 | 17,252 | 27,150 | 22,201 |
| KFSF–DT | 7,348,828 | 53,091 | 54,000 | 53,545 |
| KFSM–TV | 906,728 | 6,551 | 13,550 | 10,050 |
| KFSN–TV | 1,747,889 | 12,627 | 13,550 | 13,089 |
| KFTA–TV | 818,859 | 5,916 | 13,550 | 9,733 |
| KFTC | 61,990 | 448 | 40,675 | 20,561 |
| KFTH–DT | 6,080,688 | 43,929 | 54,000 | 48,965 |
| KFTR–DT | 17,560,679 | 126,865 | 54,000 | 90,432 |
| KFTU–DT | 113,876 | 823 | 13,550 | 7,186 |
| KFTV–DT | 1,807,731 | 13,060 | 13,550 | 13,305 |
| KFVE | 953,895 | 6,891 | 13,550 | 10,221 |
| KKAI | 955,203 | 6,901 | 13,550 | 10,225 |
| KKAP | 957,786 | 6,919 | 13,550 | 10,235 |
| KKCO | 7,360 | 53 | 4,450 | 2,252 |
| KKJB | 629,939 | 4,551 | 4,450 | 4,500 |
| KKPX–TV | 7,902,064 | 57,087 | 54,000 | 55,544 |
| KKTV | 2,795,275 | 20,194 | 13,550 | 16,872 |
| KLAS–TV | 2,094,297 | 15,130 | 27,150 | 21,140 |
| KLAX–TV | 367,212 | 2,653 | 4,450 | 3,551 |
| KLBK–TV | 387,909 | 2,802 | 4,450 | 3,626 |
| KLBY | 34,288 | 248 | 13,550 | 6,899 |
| KFVS–TV | 810,574 | 5,856 | 13,550 | 9,703 |
| KFWD | 6,610,836 | 47,759 | 54,000 | 50,880 |
| KFXA | 875,538 | 6,325 | 13,550 | 9,938 |
| KFXK–TV | 926,496 | 6,693 | 4,450 | 5,572 |
| KFXL–TV | 361,632 | 2,613 | 4,450 | 3,531 |
| KFYR–TV | 130,881 | 946 | 4,450 | 2,698 |
| KGAN | 1,083,213 | 7,826 | 13,550 | 10,688 |
| KGBT–TV | 1,230,798 | 8,892 | 13,550 | 11,221 |
| KGBY | 270,089 | 1,951 | 4,450 | 3,201 |
| KGCW | 888,054 | 6,416 | 4,450 | 5,433 |
| KLCW–TV | 376,430 | 2,719 | 4,450 | 3,585 |
| KLDO–TV | 250,832 | 1,812 | 4,450 | 3,131 |
| KLEI–TV | 82,902 | 599 | 13,550 | 7,074 |
| KLEW–TV | 134,163 | 969 | 13,550 | 7,260 |
| KLFY–TV | 1,355,890 | 9,795 | 4,450 | 7,123 |
| KLJB | 960,055 | 6,936 | 4,450 | 5,693 |
| KLKN | 932,757 | 6,739 | 4,450 | 5,594 |
| KLRT–TV | 1,171,678 | 8,465 | 13,550 | 11,007 |
| KLSR–TV | 564,415 | 4,078 | 4,450 | 4,264 |
| KLST | 199,067 | 1,438 | 4,450 | 2,944 |
| KGEB | 1,186,225 | 8,570 | 13,550 | 11,060 |
| KGET–TV | 917,927 | 6,631 | 4,450 | 5,541 |
| KGIN | 230,535 | 1,665 | 4,450 | 3,058 |
| KGLA–DT | 1,645,641 | 11,889 | 27,150 | 19,519 |
| KGMB | 953,398 | 6,888 | 13,550 | 10,219 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KGMC | 1,759,725 | 12,713 | 13,550 | 13,131 |
| KGMD–TV | 94,323 | 681 | 13,550 | 7,116 |
| KGMV | 193,564 | 1,398 | 13,550 | 7,474 |
| KGNS–TV | 267,236 | 1,931 | 4,450 | 3,190 |
| KGO–TV | 8,283,429 | 59,843 | 54,000 | 56,921 |
| KLTJ | 6,034,131 | 43,593 | 54,000 | 48,796 |
| KLTV | 1,069,690 | 7,728 | 4,450 | 6,089 |
| KLUJ–TV | 1,195,751 | 8,639 | 13,550 | 11,094 |
| KLUZ–TV | 1,079,718 | 7,800 | 27,150 | 17,475 |
| KLWB | 1,216,359 | 8,787 | 4,450 | 6,619 |
| KLWY | 541,043 | 3,909 | 4,450 | 4,179 |
| KMAU | 213,060 | 1,539 | 13,550 | 7,545 |
| KMAX–TV | 10,644,556 | 76,900 | 40,675 | 58,788 |
| KGPE | 1,699,131 | 12,275 | 13,550 | 12,913 |
| KGPX–TV | 698,441 | 5,046 | 13,550 | 9,298 |
| KGTV | 3,960,667 | 28,613 | 27,150 | 27,882 |
| KGUN–TV | 1,552,522 | 11,216 | 13,550 | 12,383 |
| KGW | 3,058,216 | 22,094 | 40,675 | 31,384 |
| KGWC–TV | 80,475 | 581 | 4,450 | 2,516 |
| KGWL–TV | 38,125 | 275 | 4,450 | 2,363 |
| KGWN–TV | 469,467 | 3,392 | 4,450 | 3,921 |
| KMBC–TV | 2,507,895 | 18,118 | 27,150 | 22,634 |
| KMBH | 1,225,732 | 8,855 | 13,550 | 11,203 |
| KMCB | 69,357 | 501 | 4,450 | 2,476 |
| KMCC | 2,064,592 | 14,915 | 27,150 | 21,033 |
| KMCI–TV | 2,362,805 | 17,070 | 27,150 | 22,110 |
| KMCY | 71,797 | 519 | 4,450 | 2,484 |
| KMEG | 701,162 | 5,065 | 4,450 | 4,758 |
| KMEX–DT | 17,628,354 | 127,354 | 54,000 | 90,677 |
| KGWR–TV | 51,315 | 371 | 4,450 | 2,410 |
| KHAW–TV | 95,204 | 688 | 13,550 | 7,119 |
| KHBC–TV | 74,884 | 541 | 13,550 | 7,045 |
| KHBS | 631,770 | 4,564 | 13,550 | 9,057 |
| KHGI–TV | 233,973 | 1,690 | 4,450 | 3,070 |
| KHME | 181,345 | 1,310 | 4,450 | 2,880 |
| KHMT | 175,601 | 1,269 | 4,450 | 2,859 |
| KHNL | 953,398 | 6,888 | 13,550 | 10,219 |
| KMGH–TV | 3,815,253 | 27,563 | 40,675 | 34,119 |
| KMID | 383,449 | 2,770 | 4,450 | 3,610 |
| KMIR–TV | 862,440 | 6,231 | 4,450 | 5,340 |
| KMIZ | 550,860 | 3,980 | 4,450 | 4,215 |
| KMLU | 711,951 | 5,143 | 4,450 | 4,797 |
| KMOH–TV | 199,885 | 1,444 | 40,675 | 21,060 |
| KMOT | 81,517 | 589 | 4,450 | 2,519 |
| KMOV | 3,035,077 | 21,927 | 40,675 | 31,301 |
| KHOG–TV | 765,360 | 5,529 | 13,550 | 9,540 |
| KHON–TV | 953,207 | 6,886 | 13,550 | 10,218 |
| KHOU | 6,137,449 | 44,339 | 54,000 | 49,170 |
| KHQA–TV | 318,469 | 2,301 | 4,450 | 3,375 |
| KHQ–TV | 822,371 | 5,941 | 13,550 | 9,746 |
| KHRR | 1,172,397 | 8,470 | 13,550 | 11,010 |
| KHSD–TV | 188,735 | 1,363 | 4,450 | 2,907 |
| KHSV | 2,062,231 | 14,898 | 27,150 | 21,024 |
| KNVO | 1,241,165 | 8,967 | 13,550 | 11,258 |
| KNWA–TV | 815,678 | 5,893 | 13,550 | 9,721 |
| KNXV–TV | 4,183,943 | 30,226 | 40,675 | 35,451 |
| KOAA–TV | 1,391,946 | 10,056 | 13,550 | 11,803 |
| KOAM–TV | 595,307 | 4,301 | 4,450 | 4,375 |
| KOAT–TV | 1,153,633 | 8,334 | 27,150 | 17,742 |
| KOB | 1,152,841 | 8,329 | 27,150 | 17,739 |
| KOBF | 201,911 | 1,459 | 27,150 | 14,304 |
| KOBI | 571,963 | 4,132 | 4,450 | 4,291 |
| KHVO | 94,226 | 681 | 13,550 | 7,115 |
| KIAH | 6,054,519 | 43,740 | 54,000 | 48,870 |
| KMPH–TV | 1,725,397 | 12,465 | 13,550 | 13,007 |
| KMPX | 6,678,829 | 48,250 | 54,000 | 51,125 |
| KMSB | 1,321,614 | 9,548 | 13,550 | 11,549 |
| KMSP–TV | 3,832,040 | 27,684 | 40,675 | 34,180 |
| KMSS–TV | 1,068,120 | 7,716 | 13,550 | 10,633 |
| KMTR | 589,948 | 4,262 | 4,450 | 4,356 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KMTV–TV | 1,346,474 | 9,727 | 13,550 | 11,639 |
| KOBR | 211,709 | 1,529 | 27,150 | 14,340 |
| KOCB | 1,629,783 | 11,774 | 27,150 | 19,462 |
| KOCO–TV | 1,716,569 | 12,401 | 27,150 | 19,776 |
| KOCW | 83,807 | 605 | 13,550 | 7,078 |
| KODE–TV | 607,048 | 4,386 | 4,450 | 4,418 |
| KOGG | 190,829 | 1,379 | 13,550 | 7,464 |
| KOHD | 201,310 | 1,454 | 4,450 | 2,952 |
| KOIN | 2,983,136 | 21,551 | 40,675 | 31,113 |
| KOKH–TV | 1,627,116 | 11,755 | 27,150 | 19,452 |
| KMTW | 761,521 | 5,502 | 13,550 | 9,526 |
| KMVT | 184,647 | 1,334 | 4,450 | 2,892 |
| KMVU–DT | 308,150 | 2,226 | 4,450 | 3,338 |
| KMYA–DT | 200,764 | 1,450 | 13,550 | 7,500 |
| KMYS | 2,273,888 | 16,427 | 27,150 | 21,789 |
| KMYT–TV | 1,314,238 | 9,495 | 13,550 | 11,522 |
| KMYU | 133,563 | 965 | 27,150 | 14,057 |
| KNAZ–TV | 332,321 | 2,401 | 40,675 | 21,538 |
| KNBC | 17,859,647 | 129,025 | 54,000 | 91,512 |
| KOKI–TV | 1,366,220 | 9,870 | 13,550 | 11,710 |
| KOLD–TV | 988,704 | 7,143 | 13,550 | 10,346 |
| KOLN | 1,225,400 | 8,853 | 4,450 | 6,651 |
| KOLO–TV | 959,178 | 6,929 | 4,450 | 5,690 |
| KOLR | 1,076,144 | 7,774 | 13,550 | 10,662 |
| KOMO–TV | 4,123,984 | 29,793 | 40,675 | 35,234 |
| KONG | 4,006,008 | 28,941 | 40,675 | 34,808 |
| KOPX–TV | 1,513,730 | 10,936 | 27,150 | 19,043 |
| KORO | 560,983 | 4,053 | 4,450 | 4,251 |
| KOSA–TV | 340,978 | 2,463 | 4,450 | 3,457 |
| KNBN | 145,493 | 1,051 | 4,450 | 2,751 |
| KNCT | 2,247,724 | 16,238 | 13,550 | 14,894 |
| KNDB | 118,154 | 854 | 4,450 | 2,652 |
| KNDM | 72,216 | 522 | 4,450 | 2,486 |
| KNDO | 314,875 | 2,275 | 4,450 | 3,362 |
| KNDU | 475,612 | 3,436 | 4,450 | 3,943 |
| KNEP | 101,389 | 732 | 4,450 | 2,591 |
| KNHL | 277,777 | 2,007 | 4,450 | 3,228 |
| KNIC–DT | 2,398,296 | 17,326 | 27,150 | 22,238 |
| KNIN–TV | 709,494 | 5,126 | 4,450 | 4,788 |
| KOTA–TV | 174,876 | 1,263 | 4,450 | 2,857 |
| KOTI | 298,175 | 2,154 | 4,450 | 3,302 |
| KOTV–DT | 49,496 | 358 | 13,550 | 6,954 |
| KOVR | 10,759,811 | 77,733 | 40,675 | 59,204 |
| KOZL–TV | 992,495 | 7,170 | 13,550 | 10,360 |
| KPAX–TV | 206,895 | 1,495 | 4,450 | 2,972 |
| KPAZ–TV | 4,190,080 | 30,271 | 40,675 | 35,473 |
| KQCW–DT | 1,128,198 | 8,151 | 13,550 | 10,850 |
| KQDS–TV | 305,747 | 2,209 | 4,450 | 3,329 |
| KQED | 8,195,398 | 59,207 | 54,000 | 56,603 |
| KNLC | 2,944,530 | 21,272 | 40,675 | 30,974 |
| KNOE–TV | 733,097 | 5,296 | 4,450 | 4,873 |
| KNOP–TV | 87,904 | 635 | 4,450 | 2,543 |
| KNRR | 25,957 | 188 | 4,450 | 2,319 |
| KNSD | 3,541,824 | 25,587 | 27,150 | 26,369 |
| KNSO | 2,092,512 | 15,117 | 13,550 | 14,334 |
| KNTV | 8,022,662 | 57,959 | 54,000 | 55,979 |
| KNVA | 2,412,222 | 17,427 | 27,150 | 22,288 |
| KNVN | 495,403 | 3,579 | 4,450 | 4,014 |
| KPDX | 2,970,703 | 21,461 | 40,675 | 31,068 |
| KQET | 2,981,040 | 21,536 | 4,450 | 12,993 |
| KQME | 188,783 | 1,364 | 4,450 | 2,907 |
| KQTV | 1,494,987 | 10,800 | 4,450 | 7,625 |
| KRBC–TV | 229,395 | 1,657 | 4,450 | 3,054 |
| KRBK | 983,888 | 7,108 | 13,550 | 10,329 |
| KRCA | 17,791,505 | 128,532 | 54,000 | 91,266 |
| KRCB | 5,320,127 | 38,435 | 54,000 | 46,217 |
| KRCG | 684,989 | 4,949 | 4,450 | 4,699 |
| KRCR–TV | 485,749 | 3,509 | 4,450 | 3,980 |
| KRCW–TV | 2,966,577 | 21,432 | 40,675 | 31,053 |
| KPEJ–TV | 368,212 | 2,660 | 4,450 | 3,555 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KPHO–TV | 4,195,073 | 30,307 | 40,675 | 35,491 |
| KPIC | 53,109 | 384 | 4,450 | 2,417 |
| KPIF | 255,766 | 1,848 | 4,450 | 3,149 |
| KPIX–TV | 8,340,753 | 60,257 | 54,000 | 57,128 |
| KPJK | 7,672,473 | 55,429 | 54,000 | 54,714 |
| KPLC | 1,406,085 | 10,158 | 4,450 | 7,304 |
| KPLO–TV | 55,827 | 403 | 4,450 | 2,427 |
| KPLR–TV | 2,968,619 | 21,446 | 40,675 | 31,061 |
| KPMR | 1,731,370 | 12,508 | 4,450 | 8,479 |
| KRDK–TV | 349,941 | 2,528 | 4,450 | 3,489 |
| KRDO–TV | 2,622,603 | 18,947 | 13,550 | 16,248 |
| KREG–TV | 149,306 | 1,079 | 40,675 | 20,877 |
| KREM | 817,619 | 5,907 | 13,550 | 9,728 |
| KREN–TV | 810,039 | 5,852 | 4,450 | 5,151 |
| KREX–TV | 145,700 | 1,053 | 4,450 | 2,751 |
| KREY–TV | 74,963 | 542 | 4,450 | 2,496 |
| KREZ–TV | 148,079 | 1,070 | 27,150 | 14,110 |
| KRGV–TV | 1,247,057 | 9,009 | 13,550 | 11,280 |
| KRII | 133,840 | 967 | 4,450 | 2,708 |
| KPNZ | 2,394,311 | 17,297 | 27,150 | 22,224 |
| KPOB–TV | 144,525 | 1,044 | 13,550 | 7,297 |
| KPPX–TV | 4,186,998 | 30,248 | 40,675 | 35,462 |
| KPRC–TV | 6,099,422 | 44,064 | 54,000 | 49,032 |
| KPRY–TV | 42,521 | 307 | 4,450 | 2,379 |
| KPTH | 583,937 | 4,219 | 4,450 | 4,334 |
| KPTM | 1,388,670 | 10,032 | 13,550 | 11,791 |
| KPTV | 2,998,460 | 21,662 | 40,675 | 31,168 |
| KPVI–DT | 271,379 | 1,961 | 4,450 | 3,205 |
| KPXB–TV | 6,062,472 | 43,798 | 54,000 | 48,899 |
| KRIS–TV | 561,825 | 4,059 | 4,450 | 4,254 |
| KRIV | 6,078,936 | 43,916 | 54,000 | 48,958 |
| KRNV–DT | 981,687 | 7,092 | 4,450 | 5,771 |
| KRON–TV | 8,050,508 | 58,160 | 54,000 | 56,080 |
| KRQE | 1,158,673 | 8,371 | 27,150 | 17,760 |
| KRTN–TV | 96,062 | 694 | 27,150 | 13,922 |
| KRTV | 92,687 | 670 | 4,450 | 2,560 |
| KRWB–TV | 111,538 | 806 | 27,150 | 13,978 |
| KRWF | 85,596 | 618 | 40,675 | 20,647 |
| KRXI–TV | 569,533 | 4,115 | 4,450 | 4,282 |
| KPXC–TV | 3,399,664 | 24,560 | 40,675 | 32,618 |
| KPXD–TV | 6,603,994 | 47,710 | 54,000 | 50,855 |
| KPXE–TV | 2,437,178 | 17,607 | 27,150 | 22,379 |
| KPXG–TV | 3,026,219 | 21,863 | 40,675 | 31,269 |
| KPXJ | 1,026,423 | 7,415 | 13,550 | 10,483 |
| KPXL–TV | 2,257,007 | 16,305 | 27,150 | 21,728 |
| KPXM–TV | 3,507,312 | 25,338 | 40,675 | 33,007 |
| KPXN–TV | 17,058,741 | 123,239 | 54,000 | 88,619 |
| KPXO–TV | 959,493 | 6,932 | 13,550 | 10,241 |
| KPXR–TV | 828,915 | 5,988 | 13,550 | 9,769 |
| KSAN–TV | 135,063 | 976 | 4,450 | 2,713 |
| KSAS–TV | 752,513 | 5,436 | 13,550 | 9,493 |
| KSTU | 2,384,996 | 17,230 | 27,150 | 22,190 |
| KSTW | 4,265,956 | 30,819 | 40,675 | 35,747 |
| KSVI | 175,390 | 1,267 | 4,450 | 2,859 |
| KSWB–TV | 3,787,157 | 27,360 | 27,150 | 27,255 |
| KSWO–TV | 483,132 | 3,490 | 4,450 | 3,970 |
| KSWT | 396,278 | 2,863 | 4,450 | 3,656 |
| KSYS | 519,209 | 3,751 | 4,450 | 4,100 |
| KTAB–TV | 270,967 | 1,958 | 4,450 | 3,204 |
| KQCA | 9,931,378 | 71,748 | 40,675 | 56,211 |
| KQCD–TV | 35,623 | 257 | 4,450 | 2,354 |
| KSAT–TV | 2,530,706 | 18,283 | 27,150 | 22,716 |
| KSAX | 359,400 | 2,596 | 40,675 | 21,636 |
| KSAZ–TV | 4,207,660 | 30,398 | 40,675 | 35,536 |
| KSBI | 1,577,231 | 11,394 | 27,150 | 19,272 |
| KSBW | 5,083,461 | 36,725 | 4,450 | 20,587 |
| KSBY | 535,029 | 3,865 | 4,450 | 4,158 |
| KSCC | 502,915 | 3,633 | 4,450 | 4,042 |
| KSCI | 17,447,903 | 126,050 | 54,000 | 90,025 |
| KTAL–TV | 1,110,819 | 8,025 | 13,550 | 10,787 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KTAS | 471,882 | 3,409 | 4,450 | 3,930 |
| KTAZ | 4,176,236 | 30,171 | 40,675 | 35,423 |
| KTBC | 3,242,215 | 23,423 | 27,150 | 25,286 |
| KTBO–TV | 1,585,283 | 11,453 | 27,150 | 19,301 |
| KTBS–TV | 1,163,228 | 8,404 | 13,550 | 10,977 |
| KTBU | 6,076,521 | 43,899 | 54,000 | 48,950 |
| KTBW–TV | 4,202,104 | 30,358 | 40,675 | 35,516 |
| KTBY | 348,080 | 2,515 | 4,450 | 3,482 |
| KSCW–DT | 915,691 | 6,615 | 13,550 | 10,083 |
| KSDK | 2,986,764 | 21,577 | 40,675 | 31,126 |
| KSEE | 1,749,448 | 12,639 | 13,550 | 13,094 |
| KSFY–TV | 670,536 | 4,844 | 4,450 | 4,647 |
| KSGW–TV | 62,178 | 449 | 4,450 | 2,450 |
| KSHB–TV | 2,361,771 | 17,062 | 27,150 | 22,106 |
| KSHV–TV | 937,203 | 6,771 | 13,550 | 10,160 |
| KSKN | 731,818 | 5,287 | 13,550 | 9,418 |
| KSLA | 1,009,108 | 7,290 | 13,550 | 10,420 |
| KTCW | 100,392 | 725 | 4,450 | 2,588 |
| KTDO | 1,015,338 | 7,335 | 13,550 | 10,443 |
| KTEL–TV | 53,423 | 386 | 27,150 | 13,768 |
| KTEN | 566,422 | 4,092 | 4,450 | 4,271 |
| KTFD–TV | 3,265,713 | 23,593 | 40,675 | 32,134 |
| KTFF–DT | 2,162,454 | 15,622 | 13,550 | 14,586 |
| KTFK–DT | 6,969,307 | 50,349 | 40,675 | 45,512 |
| KTFN | 1,015,088 | 7,333 | 13,550 | 10,442 |
| KTFQ–TV | 1,136,300 | 8,209 | 27,150 | 17,680 |
| KTGM | 159,358 | 1,151 | 4,450 | 2,801 |
| KSL–TV | 2,390,708 | 17,271 | 27,150 | 22,211 |
| KSMO–TV | 2,401,134 | 17,347 | 27,150 | 22,248 |
| KSNB–TV | 658,560 | 4,758 | 4,450 | 4,604 |
| KSNC | 174,135 | 1,258 | 13,550 | 7,404 |
| KSNF | 500,881 | 3,619 | 4,450 | 4,034 |
| KSNG | 145,058 | 1,048 | 13,550 | 7,299 |
| KSNK | 48,715 | 352 | 13,550 | 6,951 |
| KSNT | 622,818 | 4,499 | 4,450 | 4,475 |
| KSNV | 33,709 | 244 | 27,150 | 13,697 |
| KSNW | 789,136 | 5,701 | 13,550 | 9,626 |
| KTHV | 1,284,362 | 9,279 | 13,550 | 11,414 |
| KTIV | 688,477 | 4,974 | 4,450 | 4,712 |
| KTKA–TV | 567,958 | 4,103 | 4,450 | 4,277 |
| KTLA | 17,994,407 | 129,998 | 54,000 | 91,999 |
| KTLM | 373,084 | 2,695 | 13,550 | 8,123 |
| KTMD | 6,074,240 | 43,883 | 54,000 | 48,941 |
| KTMF | 187,251 | 1,353 | 4,450 | 2,901 |
| KTVM–TV | 277,657 | 2,006 | 4,450 | 3,228 |
| KTVN | 955,300 | 6,901 | 4,450 | 5,676 |
| KTVO | 148,780 | 1,075 | 4,450 | 2,762 |
| KSPS–TV | 819,981 | 5,924 | 13,550 | 9,737 |
| KSPX–TV | 6,745,180 | 48,730 | 40,675 | 44,702 |
| KSQA | 382,328 | 2,762 | 4,450 | 3,606 |
| KSTC–TV | 3,796,912 | 27,430 | 40,675 | 34,053 |
| KSTF | 51,317 | 371 | 4,450 | 2,410 |
| KSTP–TV | 3,788,898 | 27,372 | 40,675 | 34,024 |
| KSTR–DT | 6,617,736 | 47,809 | 54,000 | 50,904 |
| KSTS | 7,645,340 | 55,233 | 54,000 | 54,616 |
| KTMW | 2,261,671 | 16,339 | 27,150 | 21,745 |
| KTNL–TV | 8,642 | 62 | 4,450 | 2,256 |
| KTVQ | 179,797 | 1,299 | 4,450 | 2,874 |
| KTVT | 6,912,366 | 49,937 | 54,000 | 51,969 |
| KTVU | 7,913,996 | 57,174 | 54,000 | 55,587 |
| KTVW–DT | 4,173,111 | 30,148 | 40,675 | 35,412 |
| KTVX | 2,381,728 | 17,206 | 27,150 | 22,178 |
| KTVZ | 201,828 | 1,458 | 4,450 | 2,954 |
| KTWO–TV | 80,426 | 581 | 4,450 | 2,516 |
| KTXA | 6,876,811 | 49,681 | 54,000 | 51,840 |
| KTXD–TV | 6,546,692 | 47,296 | 54,000 | 50,648 |
| KTXH | 6,092,710 | 44,016 | 54,000 | 49,008 |
| KTNV–TV | 2,094,506 | 15,131 | 27,150 | 21,141 |
| KTOO–TV | 31,269 | 226 | 4,450 | 2,338 |
| KTPX–TV | 1,066,196 | 7,703 | 13,550 | 10,626 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KTRE | 441,879 | 3,192 | 4,450 | 3,821 |
| KTRK–TV | 6,114,259 | 44,172 | 54,000 | 49,086 |
| KTRV–TV | 714,833 | 5,164 | 4,450 | 4,807 |
| KTSF | 7,921,124 | 57,225 | 54,000 | 55,613 |
| KTSM–TV | 1,015,348 | 7,335 | 13,550 | 10,443 |
| KTTC | 815,213 | 5,889 | 4,450 | 5,170 |
| KTTM | 76,133 | 550 | 4,450 | 2,500 |
| KTXL | 7,355,088 | 53,136 | 40,675 | 46,905 |
| KTXS–TV | 247,603 | 1,789 | 4,450 | 3,119 |
| KUAM–TV | 159,358 | 1,151 | 4,450 | 2,801 |
| KUBD | 14,858 | 107 | 4,450 | 2,279 |
| KUBE–TV | 6,062,183 | 43,795 | 54,000 | 48,898 |
| KUCW | 2,388,146 | 17,253 | 27,150 | 22,201 |
| KULR–TV | 177,242 | 1,280 | 4,450 | 2,865 |
| KUMV–TV | 41,607 | 301 | 4,450 | 2,375 |
| KUNP | 130,559 | 943 | 40,675 | 20,809 |
| KUNS–TV | 4,023,436 | 29,067 | 40,675 | 34,871 |
| KTTU | 1,324,801 | 9,571 | 13,550 | 11,560 |
| KTTV | 17,952,596 | 129,696 | 54,000 | 91,848 |
| KTTW | 329,557 | 2,381 | 4,450 | 3,415 |
| KTUL | 1,416,959 | 10,237 | 13,550 | 11,893 |
| KTUU–TV | 380,240 | 2,747 | 4,450 | 3,598 |
| KTUZ–TV | 1,668,531 | 12,054 | 27,150 | 19,602 |
| KTVA | 342,517 | 2,474 | 4,450 | 3,462 |
| KTVB | 719,145 | 5,195 | 4,450 | 4,823 |
| KTVC | 137,239 | 991 | 4,450 | 2,721 |
| KTVD | 3,845,148 | 27,779 | 40,675 | 34,227 |
| KUOK | 28,974 | 209 | 27,150 | 13,680 |
| KUPB | 318,914 | 2,304 | 4,450 | 3,377 |
| KUPK | 149,642 | 1,081 | 13,550 | 7,316 |
| KUPT | 87,602 | 633 | 27,150 | 13,891 |
| KUPX–TV | 2,374,672 | 17,156 | 27,150 | 22,153 |
| KUSA | 3,803,461 | 27,478 | 40,675 | 34,076 |
| KVVU–TV | 2,042,029 | 14,752 | 27,150 | 20,951 |
| KVYE | 396,495 | 2,864 | 4,450 | 3,657 |
| KWAB–TV | 50,707 | 366 | 4,450 | 2,408 |
| KWBA–TV | 1,129,524 | 8,160 | 13,550 | 10,855 |
| KTVE | 641,139 | 4,632 | 4,450 | 4,541 |
| KTVF | 68,847 | 497 | 4,450 | 2,474 |
| KTVH–DT | 228,832 | 1,653 | 4,450 | 3,052 |
| KTVI | 2,979,889 | 21,528 | 40,675 | 31,101 |
| KTVK | 4,184,825 | 30,233 | 40,675 | 35,454 |
| KTVL | 415,327 | 3,000 | 4,450 | 3,725 |
| KUSI–TV | 3,572,818 | 25,811 | 27,150 | 26,481 |
| KUTH–DT | 2,219,788 | 16,037 | 27,150 | 21,593 |
| KUTP | 4,191,015 | 30,277 | 40,675 | 35,476 |
| KUTV | 2,388,211 | 17,253 | 27,150 | 22,202 |
| KWBN | 953,207 | 6,886 | 13,550 | 10,218 |
| KWBQ | 1,148,810 | 8,299 | 27,150 | 17,725 |
| KWCH–DT | 883,647 | 6,384 | 13,550 | 9,967 |
| KWCM–TV | 252,284 | 1,823 | 40,675 | 21,249 |
| KWES–TV | 424,862 | 3,069 | 4,450 | 3,760 |
| KWEX–DT | 2,365,653 | 17,090 | 27,150 | 22,120 |
| KWGN–TV | 3,706,495 | 26,777 | 40,675 | 33,726 |
| KWHB | 1,104,914 | 7,982 | 13,550 | 10,766 |
| KWHD | 97,959 | 708 | 13,550 | 7,129 |
| KWHE | 952,966 | 6,885 | 13,550 | 10,217 |
| KUVE–DT | 1,264,962 | 9,139 | 13,550 | 11,344 |
| KUVI–DT | 1,006,905 | 7,274 | 4,450 | 5,862 |
| KUVN–DT | 6,682,825 | 48,279 | 54,000 | 51,140 |
| KUVS–DT | 4,043,413 | 29,211 | 40,675 | 34,943 |
| KVAL–TV | 1,016,673 | 7,345 | 4,450 | 5,897 |
| KVAW | 76,153 | 550 | 27,150 | 13,850 |
| KVCT | 288,221 | 2,082 | 4,450 | 3,266 |
| KVCW | 33,709 | 244 | 27,150 | 13,697 |
| KVDA | 2,400,582 | 17,343 | 27,150 | 22,246 |
| KVEA | 17,925,427 | 129,500 | 54,000 | 91,750 |
| KWHM | 175,045 | 1,265 | 13,550 | 7,407 |
| KWHY–TV | 17,343,236 | 125,294 | 54,000 | 89,647 |
| KWKB | 1,121,676 | 8,103 | 13,550 | 10,827 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KWKT–TV | 1,010,550 | 7,301 | 13,550 | 10,425 |
| KWNB–TV | 91,093 | 658 | 4,450 | 2,554 |
| KWPX–TV | 4,220,008 | 30,487 | 40,675 | 35,581 |
| KWQC–TV | 1,080,156 | 7,803 | 4,450 | 6,127 |
| KWSD | 280,675 | 2,028 | 4,450 | 3,239 |
| KWTV–DT | 1,628,106 | 11,762 | 27,150 | 19,456 |
| KWTX–TV | 2,071,023 | 14,962 | 13,550 | 14,256 |
| KVEO–TV | 1,244,504 | 8,991 | 13,550 | 11,270 |
| KVEW | 476,720 | 3,444 | 4,450 | 3,947 |
| KVHP | 743,167 | 5,369 | 4,450 | 4,909 |
| KVIA–TV | 1,015,350 | 7,335 | 13,550 | 10,443 |
| KVIE | 10,772,354 | 77,823 | 40,675 | 59,249 |
| KVIH–TV | 91,912 | 664 | 4,450 | 2,557 |
| KVII–TV | 379,042 | 2,738 | 4,450 | 3,594 |
| KVLY–TV | 347,517 | 2,511 | 4,450 | 3,480 |
| KVMD | 6,145,526 | 44,398 | 54,000 | 49,199 |
| KVME–TV | 26,711 | 193 | 54,000 | 27,096 |
| KWWL | 1,171,751 | 8,465 | 13,550 | 11,008 |
| KWWT | 293,291 | 2,119 | 4,450 | 3,284 |
| KWYB | 86,495 | 625 | 4,450 | 2,537 |
| KXAN–TV | 2,678,666 | 19,352 | 27,150 | 23,251 |
| KXAS–TV | 6,774,295 | 48,940 | 54,000 | 51,470 |
| KXGN–TV | 14,217 | 103 | 4,450 | 2,276 |
| KXII | 2,323,974 | 16,789 | 4,450 | 10,620 |
| KXLA | 17,653,508 | 127,535 | 54,000 | 90,768 |
| KXLF–TV | 258,100 | 1,865 | 4,450 | 3,157 |
| KXLT–TV | 348,025 | 2,514 | 4,450 | 3,482 |
| KVOA | 1,317,956 | 9,521 | 13,550 | 11,536 |
| KVOS–TV | 2,019,168 | 14,587 | 40,675 | 27,631 |
| KVRR | 356,645 | 2,577 | 4,450 | 3,513 |
| KVSN–DT | 2,711,724 | 19,590 | 13,550 | 16,570 |
| KVTH–DT | 303,744 | 2,194 | 13,550 | 7,872 |
| KVTJ–DT | 1,466,517 | 10,595 | 4,450 | 7,522 |
| KVTN–DT | 936,328 | 6,764 | 13,550 | 10,157 |
| KVUE | 2,661,290 | 19,226 | 27,150 | 23,188 |
| KVUI | 248,405 | 1,795 | 4,450 | 3,122 |
| WACY–TV | 920,090 | 6,647 | 13,550 | 10,099 |
| KXLY–TV | 784,334 | 5,666 | 13,550 | 9,608 |
| KXMA–TV | 32,005 | 231 | 4,450 | 2,341 |
| KXMB–TV | 142,755 | 1,031 | 4,450 | 2,741 |
| KXMC–TV | 97,569 | 705 | 4,450 | 2,577 |
| KXMD–TV | 37,962 | 274 | 4,450 | 2,362 |
| KXNW | 602,168 | 4,350 | 13,550 | 8,950 |
| KXRM–TV | 1,843,363 | 13,317 | 13,550 | 13,434 |
| KXTV | 10,759,864 | 77,733 | 40,675 | 59,204 |
| WADL | 4,610,514 | 33,308 | 40,675 | 36,992 |
| WAFB | 1,857,882 | 13,422 | 13,550 | 13,486 |
| WAFF | 1,197,068 | 8,648 | 13,550 | 11,099 |
| WAGA–TV | 6,000,355 | 43,349 | 54,000 | 48,674 |
| WAGM–TV | 64,721 | 468 | 13,550 | 7,009 |
| WAKA | 769,765 | 5,561 | 4,450 | 5,006 |
| WALA–TV | 1,320,419 | 9,539 | 13,550 | 11,545 |
| WALB | 773,899 | 5,591 | 4,450 | 5,020 |
| KXTX–TV | 6,716,749 | 48,524 | 54,000 | 51,262 |
| KXVA | 185,478 | 1,340 | 4,450 | 2,895 |
| KXVO | 1,333,338 | 9,633 | 13,550 | 11,591 |
| KXXV | 1,771,620 | 12,799 | 13,550 | 13,174 |
| KYAZ | 6,075,053 | 43,888 | 54,000 | 48,944 |
| KYES–TV | 381,413 | 2,755 | 4,450 | 3,603 |
| KYLE–TV | 324,032 | 2,341 | 13,550 | 7,945 |
| KYMA–DT | 398,681 | 2,880 | 4,450 | 3,665 |
| WAMI–DT | 5,406,932 | 39,062 | 40,675 | 39,868 |
| WAND | 1,400,271 | 10,116 | 13,550 | 11,833 |
| WANE–TV | 1,108,844 | 8,011 | 4,450 | 6,230 |
| WAOE | 613,812 | 4,434 | 4,450 | 4,442 |
| WAOW | 636,957 | 4,602 | 4,450 | 4,526 |
| WAPA–TV | 3,764,742 | 27,198 | 4,450 | 15,824 |
| WAPT | 793,621 | 5,733 | 13,550 | 9,642 |
| WAQP | 1,992,340 | 14,393 | 13,550 | 13,972 |
| KYOU–TV | 651,334 | 4,705 | 4,450 | 4,578 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| KYTV | 1,041,020 | 7,521 | 13,550 | 10,535 |
| KYTX | 901,751 | 6,515 | 4,450 | 5,482 |
| KYUR | 379,943 | 2,745 | 4,450 | 3,597 |
| KYUS–TV | 12,496 | 90 | 4,450 | 2,270 |
| KYVV–TV | 67,201 | 485 | 27,150 | 13,818 |
| KYW–TV | 11,061,941 | 79,916 | 54,000 | 66,958 |
| WATC–DT | 5,637,070 | 40,724 | 54,000 | 47,362 |
| WATE–TV | 1,874,433 | 13,542 | 13,550 | 13,546 |
| WATL | 5,882,837 | 42,500 | 54,000 | 48,250 |
| WATM–TV | 937,438 | 6,772 | 4,450 | 5,611 |
| WATN–TV | 1,787,595 | 12,914 | 13,550 | 13,232 |
| WAVE | 1,846,212 | 13,338 | 27,150 | 20,244 |
| WAVY–TV | 2,039,358 | 14,733 | 27,150 | 20,942 |
| KZJL | 6,007,975 | 43,404 | 54,000 | 48,702 |
| KZJO | 4,179,154 | 30,192 | 40,675 | 35,433 |
| KZTV | 567,635 | 4,101 | 4,450 | 4,275 |
| WAAY–TV | 1,530,431 | 11,056 | 13,550 | 12,303 |
| WABC–TV | 22,032,680 | 159,172 | 54,000 | 106,586 |
| WABG–TV | 393,020 | 2,839 | 4,450 | 3,645 |
| WABI–TV | 530,773 | 3,835 | 4,450 | 4,142 |
| WAWD | 553,676 | 4,000 | 13,550 | 8,775 |
| WAWV–TV | 705,549 | 5,097 | 4,450 | 4,774 |
| WAXN–TV | 659,816 | 4,767 | 40,675 | 22,721 |
| WBAL–TV | 9,596,587 | 69,329 | 27,150 | 48,240 |
| WBAY–TV | 1,225,928 | 8,857 | 13,550 | 11,203 |
| WBBH–TV | 2,046,391 | 14,784 | 13,550 | 14,167 |
| WBBJ–TV | 662,148 | 4,784 | 4,450 | 4,617 |
| WABM | 1,703,202 | 12,305 | 27,150 | 19,727 |
| WACH | 1,317,429 | 9,518 | 13,550 | 11,534 |
| WACP | 9,415,263 | 68,019 | 54,000 | 61,010 |
| WBFF | 8,509,757 | 61,478 | 27,150 | 44,314 |
| WBFS–TV | 5,349,613 | 38,648 | 40,675 | 39,661 |
| WBIH | 736,501 | 5,321 | 4,450 | 4,885 |
| WBIR–TV | 1,978,347 | 14,292 | 13,550 | 13,921 |
| WBBM–TV | 9,977,169 | 72,079 | 54,000 | 63,039 |
| WBBZ–TV | 1,269,256 | 9,170 | 13,550 | 11,360 |
| WBDT | 3,660,544 | 26,445 | 13,550 | 19,998 |
| WCCT–TV | 4,776,733 | 34,509 | 27,150 | 30,829 |
| WCCU | 395,106 | 2,854 | 13,550 | 8,202 |
| WCHS–TV | 1,352,824 | 9,773 | 13,550 | 11,662 |
| WCIA | 796,609 | 5,755 | 13,550 | 9,652 |
| WBKB–TV | 136,823 | 988 | 4,450 | 2,719 |
| WBKI | 1,983,992 | 14,333 | 4,450 | 9,392 |
| WBKO | 963,413 | 6,960 | 4,450 | 5,705 |
| WBKP | 55,655 | 402 | 4,450 | 2,426 |
| WBNA | 1,699,683 | 12,279 | 27,150 | 19,715 |
| WBNG–TV | 1,657,643 | 11,975 | 4,450 | 8,213 |
| WBNS–TV | 2,847,721 | 20,573 | 27,150 | 23,861 |
| WBNX–TV | 3,642,304 | 26,313 | 40,675 | 33,494 |
| WCIU–TV | 9,891,328 | 71,459 | 54,000 | 62,729 |
| WCIV | 1,125,558 | 8,131 | 13,550 | 10,841 |
| WCIX | 554,002 | 4,002 | 13,550 | 8,776 |
| WCJB–TV | 977,492 | 7,062 | 4,450 | 5,756 |
| WCLJ–TV | 2,258,426 | 16,316 | 27,150 | 21,733 |
| WCMH–TV | 2,756,260 | 19,912 | 27,150 | 23,531 |
| WCNC–TV | 3,822,849 | 27,618 | 40,675 | 34,146 |
| WCOV–TV | 862,899 | 6,234 | 4,450 | 5,342 |
| WBOC–TV | 783,438 | 5,660 | 4,450 | 5,055 |
| WBOY–TV | 711,302 | 5,139 | 4,450 | 4,794 |
| WBPH–TV | 12,689,628 | 91,675 | 54,000 | 72,837 |
| WBPX–TV | 6,732,628 | 48,639 | 54,000 | 51,319 |
| WBRC | 1,852,997 | 13,387 | 27,150 | 20,268 |
| WBRE–TV | 3,553,761 | 25,674 | 13,550 | 19,612 |
| WBRZ–TV | 2,223,336 | 16,062 | 13,550 | 14,806 |
| WBSF | 987,886 | 7,137 | 13,550 | 10,343 |
| WCPO–TV | 3,328,920 | 24,049 | 27,150 | 25,600 |
| WCPX–TV | 9,674,477 | 69,892 | 54,000 | 61,946 |
| WCSC–TV | 1,028,018 | 7,427 | 13,550 | 10,488 |
| WCSH | 1,682,955 | 12,158 | 13,550 | 12,854 |
| WCTE | 612,760 | 4,427 | 27,150 | 15,788 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WCTI–TV | 1,680,664 | 12,142 | 13,550 | 12,846 |
| WCTV | 1,049,825 | 7,584 | 4,450 | 6,017 |
| WCTX | 7,845,782 | 56,681 | 27,150 | 41,915 |
| WBTV | 4,433,020 | 32,026 | 40,675 | 36,350 |
| WBTW | 1,975,457 | 14,271 | 4,450 | 9,361 |
| WBUI | 981,884 | 7,093 | 13,550 | 10,322 |
| WBUP | 126,472 | 914 | 4,450 | 2,682 |
| WBXX–TV | 2,142,548 | 15,479 | 13,550 | 14,514 |
| WBZ–TV | 7,764,394 | 56,093 | 54,000 | 55,046 |
| WCAU | 11,012,279 | 79,557 | 54,000 | 66,778 |
| WCAV | 949,729 | 6,861 | 4,450 | 5,656 |
| WCVB–TV | 7,741,540 | 55,928 | 54,000 | 54,964 |
| WCVI–TV | 50,601 | 366 | 4,450 | 2,408 |
| WCWF | 1,040,984 | 7,520 | 13,550 | 10,535 |
| WCWJ | 1,582,959 | 11,436 | 27,150 | 19,293 |
| WCWN | 1,698,469 | 12,270 | 13,550 | 12,910 |
| WCYB–TV | 3,032,475 | 21,908 | 13,550 | 17,729 |
| WDAF–TV | 2,539,581 | 18,347 | 27,150 | 22,748 |
| WDAM–TV | 512,594 | 3,703 | 4,450 | 4,077 |
| WCAX–TV | 784,748 | 5,669 | 13,550 | 9,610 |
| WCBD–TV | 1,100,127 | 7,948 | 13,550 | 10,749 |
| WCBI–TV | 680,511 | 4,916 | 4,450 | 4,683 |
| WCBS–TV | 1,752,130 | 12,658 | 54,000 | 33,329 |
| WCCB | 3,542,464 | 25,592 | 40,675 | 33,134 |
| WCCO–TV | 3,837,442 | 27,723 | 40,675 | 34,199 |
| WDEF–TV | 1,731,483 | 12,509 | 13,550 | 13,029 |
| WDFX–TV | 271,499 | 1,961 | 4,450 | 3,206 |
| WDAY–TV | 339,239 | 2,451 | 4,450 | 3,450 |
| WDAZ–TV | 151,720 | 1,096 | 4,450 | 2,773 |
| WDBB | 1,669,214 | 12,059 | 27,150 | 19,605 |
| WDBD | 919,098 | 6,640 | 13,550 | 10,095 |
| WDBJ | 1,606,844 | 11,608 | 13,550 | 12,579 |
| WDCA | 8,070,491 | 58,304 | 54,000 | 56,152 |
| WETP–TV | 2,087,588 | 15,082 | 13,550 | 14,316 |
| WEUX | 379,158 | 2,739 | 4,450 | 3,595 |
| WDHN | 452,377 | 3,268 | 4,450 | 3,859 |
| WDIO–DT | 341,506 | 2,467 | 4,450 | 3,459 |
| WDIV–TV | 5,425,162 | 39,193 | 40,675 | 39,934 |
| WDJT–TV | 3,085,540 | 22,291 | 27,150 | 24,721 |
| WDKA | 621,903 | 4,493 | 13,550 | 9,021 |
| WDKY–TV | 1,159,126 | 8,374 | 13,550 | 10,962 |
| WDLI–TV | 4,165,601 | 30,094 | 40,675 | 35,384 |
| WDPB | 594,332 | 4,294 | 54,000 | 29,147 |
| WDPN–TV | 11,594,463 | 83,763 | 54,000 | 68,881 |
| WEWS–TV | 4,112,984 | 29,714 | 40,675 | 35,194 |
| WEYI–TV | 2,664,319 | 19,248 | 13,550 | 16,399 |
| WFAA | 6,957,935 | 50,267 | 54,000 | 52,133 |
| WFBD | 814,185 | 5,882 | 13,550 | 9,716 |
| WFDC–DT | 8,155,998 | 58,922 | 54,000 | 56,461 |
| WFFF–TV | 592,012 | 4,277 | 13,550 | 8,913 |
| WFFT–TV | 1,088,489 | 7,864 | 4,450 | 6,157 |
| WFGX | 1,440,245 | 10,405 | 13,550 | 11,977 |
| WFIE | 731,856 | 5,287 | 4,450 | 4,869 |
| WDPX–TV | 6,732,628 | 48,639 | 54,000 | 51,319 |
| WDRB | 1,987,708 | 14,360 | 27,150 | 20,755 |
| WDSE | 330,994 | 2,391 | 4,450 | 3,421 |
| WDSI–TV | 1,100,302 | 7,949 | 13,550 | 10,749 |
| WDSU | 1,613,076 | 11,653 | 27,150 | 19,402 |
| WDTI | 2,095,312 | 15,137 | 27,150 | 21,144 |
| WDTN | 3,660,544 | 26,445 | 13,550 | 19,998 |
| WDTV | 962,532 | 6,954 | 4,450 | 5,702 |
| WFLA–TV | 5,450,176 | 39,374 | 40,675 | 40,025 |
| WFLD | 9,957,301 | 71,935 | 54,000 | 62,968 |
| WFLI–TV | 1,272,913 | 9,196 | 13,550 | 11,373 |
| WFLX | 5,730,443 | 41,399 | 27,150 | 34,274 |
| WFMJ–TV | 3,504,955 | 25,321 | 4,450 | 14,886 |
| WFMY–TV | 4,772,783 | 34,480 | 27,150 | 30,815 |
| WFMZ–TV | 12,689,628 | 91,675 | 54,000 | 72,837 |
| WFNA | 1,283,160 | 9,270 | 13,550 | 11,410 |
| WDVM–TV | 2,667,801 | 19,273 | 54,000 | 36,637 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WDWL | 2,638,361 | 19,060 | 4,450 | 11,755 |
| WEAR–TV | 1,524,131 | 11,011 | 13,550 | 12,280 |
| WEAU | 991,019 | 7,159 | 4,450 | 5,805 |
| WEBA–TV | 639,244 | 4,618 | 4,450 | 4,534 |
| WECT | 1,134,918 | 8,199 | 4,450 | 6,325 |
| WEEK–TV | 698,238 | 5,044 | 4,450 | 4,747 |
| WFOR–TV | 5,398,266 | 38,999 | 40,675 | 39,837 |
| WFOX–TV | 1,602,888 | 11,580 | 27,150 | 19,365 |
| WFPX–TV | 2,218,968 | 16,031 | 40,675 | 28,353 |
| WFQX–TV | 537,340 | 3,882 | 4,450 | 4,166 |
| WFRV–TV | 1,201,204 | 8,678 | 13,550 | 11,114 |
| WFSB | 4,818,020 | 34,807 | 27,150 | 30,979 |
| WFTC | 3,787,177 | 27,360 | 40,675 | 34,017 |
| WEHT | 847,299 | 6,121 | 4,450 | 5,286 |
| WEMT | 1,727,493 | 12,480 | 13,550 | 13,015 |
| WENY–TV | 543,162 | 3,924 | 4,450 | 4,187 |
| WEPX–TV | 859,535 | 6,210 | 13,550 | 9,880 |
| WESH | 4,107,172 | 29,672 | 40,675 | 35,173 |
| WETA–TV | 7,607,834 | 54,962 | 54,000 | 54,481 |
| WETK | 670,087 | 4,841 | 13,550 | 9,195 |
| WETM–TV | 721,800 | 5,215 | 4,450 | 4,832 |
| WFXG | 1,126,348 | 8,137 | 4,450 | 6,294 |
| WFTS–TV | 5,077,970 | 36,685 | 40,675 | 38,680 |
| WFTT–TV | 4,523,828 | 32,682 | 40,675 | 36,678 |
| WFTV | 762,903 | 5,511 | 40,675 | 23,093 |
| WFTX–TV | 1,775,097 | 12,824 | 13,550 | 13,187 |
| WFTY–DT | 5,678,755 | 41,025 | 54,000 | 47,513 |
| WFUP | 217,655 | 1,572 | 4,450 | 3,011 |
| WFUT–DT | 19,992,096 | 144,430 | 54,000 | 99,215 |
| WFXB | 1,511,681 | 10,921 | 4,450 | 7,685 |
| WHBQ–TV | 1,736,335 | 12,544 | 13,550 | 13,047 |
| WFXL | 793,637 | 5,734 | 4,450 | 5,092 |
| WFXP | 583,315 | 4,214 | 4,450 | 4,332 |
| WFXR | 1,432,348 | 10,348 | 13,550 | 11,949 |
| WFXT | 7,366,667 | 53,220 | 54,000 | 53,610 |
| WFXU | 211,721 | 1,530 | 4,450 | 2,990 |
| WFXV | 633,597 | 4,577 | 4,450 | 4,514 |
| WFXW | 274,078 | 1,980 | 4,450 | 3,215 |
| WGAL | 7,775,662 | 56,174 | 27,150 | 41,662 |
| WHDF | 1,266,286 | 9,148 | 13,550 | 11,349 |
| WHDH | 7,319,659 | 52,880 | 54,000 | 53,440 |
| WHDT | 5,640,324 | 40,748 | 27,150 | 33,949 |
| WHEC–TV | 1,322,243 | 9,552 | 13,550 | 11,551 |
| WHFT–TV | 5,417,409 | 39,137 | 40,675 | 39,906 |
| WHIO–TV | 3,896,757 | 28,152 | 13,550 | 20,851 |
| WHIZ–TV | 910,864 | 6,580 | 4,450 | 5,515 |
| WHKY–TV | 3,038,732 | 21,953 | 40,675 | 31,314 |
| WGBA–TV | 1,170,375 | 8,455 | 13,550 | 11,003 |
| WGBC | 249,415 | 1,802 | 4,450 | 3,126 |
| WGBO–DT | 9,771,815 | 70,595 | 54,000 | 62,298 |
| WGCL–TV | 6,027,276 | 43,543 | 54,000 | 48,772 |
| WGEM–TV | 333,383 | 2,408 | 4,450 | 3,429 |
| WGEN–TV | 43,037 | 311 | 40,675 | 20,493 |
| WGFL | 759,234 | 5,485 | 4,450 | 4,967 |
| WHLT | 484,404 | 3,500 | 4,450 | 3,975 |
| WHMB–TV | 2,847,719 | 20,573 | 27,150 | 23,861 |
| WHME–TV | 1,271,796 | 9,188 | 13,550 | 11,369 |
| WHNS | 2,549,397 | 18,418 | 27,150 | 22,784 |
| WHNT–TV | 1,569,885 | 11,341 | 13,550 | 12,446 |
| WHO–DT | 1,151,807 | 8,321 | 13,550 | 10,936 |
| WHOI | 679,446 | 4,909 | 4,450 | 4,679 |
| WGGB–TV | 3,443,447 | 24,877 | 4,450 | 14,663 |
| WGHP | 3,774,522 | 27,269 | 27,150 | 27,209 |
| WGMB–TV | 1,739,804 | 12,569 | 13,550 | 13,059 |
| WGME–TV | 1,308,896 | 9,456 | 13,550 | 11,503 |
| WGNO | 1,641,765 | 11,861 | 27,150 | 19,505 |
| WGNT | 1,875,612 | 13,550 | 27,150 | 20,350 |
| WGN–TV | 9,942,959 | 71,832 | 54,000 | 62,916 |
| WHP–TV | 3,046,418 | 22,008 | 27,150 | 24,579 |
| WHPX–TV | 4,851,563 | 35,049 | 27,150 | 31,100 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WHSV–TV | 206,445 | 1,491 | 4,450 | 2,971 |
| WHTM–TV | 2,829,585 | 20,442 | 27,150 | 23,796 |
| WHYY–TV | 10,379,045 | 74,982 | 54,000 | 64,491 |
| WIAT | 1,837,072 | 13,272 | 27,150 | 20,211 |
| WIBW–TV | 1,089,708 | 7,872 | 4,450 | 6,161 |
| WGPX–TV | 1,952,062 | 14,102 | 27,150 | 20,626 |
| WGRZ | 1,878,725 | 13,573 | 13,550 | 13,561 |
| WGTA | 1,061,654 | 7,670 | 54,000 | 30,835 |
| WGTQ | 95,618 | 691 | 4,450 | 2,570 |
| WGTU | 358,543 | 2,590 | 4,450 | 3,520 |
| WGWG | 986,963 | 7,130 | 13,550 | 10,340 |
| WGWW | 1,677,166 | 12,116 | 27,150 | 19,633 |
| WGXA | 759,936 | 5,490 | 4,450 | 4,970 |
| WHAM–TV | 1,323,785 | 9,564 | 13,550 | 11,557 |
| WHAS–TV | 1,982,756 | 14,324 | 27,150 | 20,737 |
| WICD | 1,238,332 | 8,946 | 13,550 | 11,248 |
| WICS | 1,011,833 | 7,310 | 13,550 | 10,430 |
| WICU–TV | 716,630 | 5,177 | 4,450 | 4,814 |
| WICZ–TV | 976,771 | 7,057 | 4,450 | 5,753 |
| WIDP | 2,559,306 | 18,489 | 4,450 | 11,470 |
| WIFS | 1,400,358 | 10,117 | 13,550 | 11,833 |
| WILX–TV | 3,378,644 | 24,409 | 4,450 | 14,429 |
| WINK–TV | 1,851,105 | 13,373 | 13,550 | 13,462 |
| WINP–TV | 2,804,646 | 20,262 | 40,675 | 30,468 |
| WIPL | 671,201 | 4,849 | 13,550 | 9,200 |
| WHBF–TV | 1,807,539 | 13,058 | 4,450 | 8,754 |
| WIRS | 3,714,677 | 26,836 | 4,450 | 15,643 |
| WIRT–DT | 127,001 | 918 | 4,450 | 2,684 |
| WIS | 2,644,715 | 19,106 | 13,550 | 16,328 |
| WISC–TV | 1,830,642 | 13,225 | 13,550 | 13,388 |
| WISE–TV | 1,089,665 | 7,872 | 4,450 | 6,161 |
| WISH–TV | 2,912,963 | 21,044 | 27,150 | 24,097 |
| WISN–TV | 2,938,180 | 21,226 | 27,150 | 24,188 |
| WITF–TV | 2,412,561 | 17,429 | 27,150 | 22,290 |
| WIPX–TV | 2,258,426 | 16,316 | 27,150 | 21,733 |
| WJW | 3,977,148 | 28,732 | 40,675 | 34,704 |
| WJWN–TV | 1,962,885 | 14,181 | 4,450 | 9,315 |
| WJXT | 1,608,682 | 11,622 | 27,150 | 19,386 |
| WJXX | 1,618,191 | 11,690 | 27,150 | 19,420 |
| WJYS | 9,647,321 | 69,696 | 54,000 | 61,848 |
| WJZ–TV | 9,366,690 | 67,668 | 27,150 | 47,409 |
| WJZY | 4,054,244 | 29,289 | 40,675 | 34,982 |
| WKAQ–TV | 3,697,088 | 26,709 | 4,450 | 15,580 |
| WITI | 3,117,342 | 22,521 | 27,150 | 24,835 |
| WITN–TV | 1,768,040 | 12,773 | 13,550 | 13,161 |
| WIVB–TV | 1,538,108 | 11,112 | 13,550 | 12,331 |
| WIVT | 856,453 | 6,187 | 4,450 | 5,319 |
| WIWN | 3,462,960 | 25,018 | 27,150 | 26,084 |
| WIYC | 526,556 | 3,804 | 4,450 | 4,127 |
| WJAC–TV | 379,178 | 2,739 | 4,450 | 3,595 |
| WKBD–TV | 4,986,483 | 36,024 | 40,675 | 38,350 |
| WKBN–TV | 2,068,935 | 14,947 | 4,450 | 9,698 |
| WKBS–TV | 831,411 | 6,006 | 40,675 | 23,341 |
| WKBT–DT | 866,325 | 6,259 | 4,450 | 5,354 |
| WKBW–TV | 2,033,929 | 14,694 | 13,550 | 14,122 |
| WKCF | 4,032,154 | 29,130 | 40,675 | 34,902 |
| WKEF | 3,623,762 | 26,179 | 13,550 | 19,865 |
| WJAR | 6,537,858 | 47,232 | 13,550 | 30,391 |
| WJAX–TV | 1,630,782 | 11,781 | 27,150 | 19,466 |
| WJBF | 1,601,531 | 11,570 | 4,450 | 8,010 |
| WJBK | 5,748,623 | 41,530 | 40,675 | 41,103 |
| WJCL | 938,086 | 6,777 | 13,550 | 10,164 |
| WJCT | 1,624,624 | 11,737 | 27,150 | 19,443 |
| WJEB–TV | 1,607,510 | 11,613 | 27,150 | 19,382 |
| WKMG–TV | 3,803,492 | 27,478 | 40,675 | 34,076 |
| WKNX–TV | 1,684,178 | 12,167 | 13,550 | 12,859 |
| WKOI–TV | 3,660,544 | 26,445 | 13,550 | 19,998 |
| WKOP–TV | 1,532,125 | 11,069 | 13,550 | 12,309 |
| WKOW | 1,918,224 | 13,858 | 13,550 | 13,704 |
| WKPT–TV | 1,085,875 | 7,845 | 13,550 | 10,697 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WKPV | 2,550,642 | 18,427 | 4,450 | 11,438 |
| WJET–TV | 704,806 | 5,092 | 4,450 | 4,771 |
| WJFW–TV | 277,530 | 2,005 | 4,450 | 3,227 |
| WJHG–TV | 856,973 | 6,191 | 4,450 | 5,321 |
| WJHL–TV | 2,202,140 | 15,909 | 13,550 | 14,730 |
| WJKT | 654,460 | 4,728 | 4,450 | 4,589 |
| WJLA–TV | 8,970,526 | 64,806 | 54,000 | 59,403 |
| WJLP | 21,384,863 | 154,492 | 54,000 | 104,246 |
| WJMN–TV | 160,991 | 1,163 | 4,450 | 2,807 |
| WKRC–TV | 3,281,914 | 23,710 | 27,150 | 25,430 |
| WKRG–TV | 1,499,595 | 10,834 | 13,550 | 12,192 |
| WKRN–TV | 2,410,573 | 17,415 | 27,150 | 22,282 |
| WKTC | 1,386,422 | 10,016 | 13,550 | 11,783 |
| WKTV | 1,573,503 | 11,368 | 4,450 | 7,909 |
| WKYC | 4,154,903 | 30,017 | 40,675 | 35,346 |
| WKYT–TV | 1,138,566 | 8,225 | 13,550 | 10,888 |
| WLAJ | 1,865,669 | 13,478 | 4,450 | 8,964 |
| WJPX | 3,254,481 | 23,512 | 4,450 | 13,981 |
| WJRT–TV | 2,788,684 | 20,146 | 13,550 | 16,848 |
| WJTC | 1,347,474 | 9,735 | 13,550 | 11,642 |
| WJTV | 987,206 | 7,132 | 13,550 | 10,341 |
| WLFI–TV | 2,243,009 | 16,204 | 4,450 | 10,327 |
| WLFL | 3,640,360 | 26,299 | 40,675 | 33,487 |
| WLGA | 950,018 | 6,863 | 4,450 | 5,657 |
| WLII–DT | 2,801,102 | 20,236 | 4,450 | 12,343 |
| WLIO | 1,070,641 | 7,735 | 4,450 | 6,092 |
| WLAX | 513,319 | 3,708 | 4,450 | 4,079 |
| WLBT | 948,671 | 6,854 | 13,550 | 10,202 |
| WLBZ | 373,129 | 2,696 | 4,450 | 3,573 |
| WLEX–TV | 969,543 | 7,004 | 13,550 | 10,277 |
| WMDN | 278,227 | 2,010 | 4,450 | 3,230 |
| WMDT | 731,931 | 5,288 | 4,450 | 4,869 |
| WMFD–TV | 1,561,367 | 11,280 | 40,675 | 25,977 |
| WMFP | 5,792,048 | 41,844 | 54,000 | 47,922 |
| WMGM–TV | 807,797 | 5,836 | 54,000 | 29,918 |
| WLIW | 14,117,756 | 101,992 | 54,000 | 77,996 |
| WLJC–TV | 1,433,458 | 10,356 | 13,550 | 11,953 |
| WLKY | 1,854,829 | 13,400 | 27,150 | 20,275 |
| WLMB | 2,754,484 | 19,899 | 13,550 | 16,725 |
| WLMT | 1,736,552 | 12,545 | 13,550 | 13,048 |
| WLNE–TV | 5,705,441 | 41,218 | 13,550 | 27,384 |
| WLNS–TV | 1,865,669 | 13,478 | 4,450 | 8,964 |
| WLNY–TV | 5,983,123 | 43,224 | 54,000 | 48,612 |
| WMGT–TV | 601,894 | 4,348 | 4,450 | 4,399 |
| WMOR–TV | 5,386,517 | 38,914 | 40,675 | 39,795 |
| WMOW | 121,150 | 875 | 4,450 | 2,663 |
| WMSN–TV | 1,579,847 | 11,413 | 13,550 | 12,482 |
| WMTJ | 3,143,148 | 22,707 | 4,450 | 13,579 |
| WMTV | 1,548,616 | 11,188 | 13,550 | 12,369 |
| WMTW | 1,940,292 | 14,017 | 13,550 | 13,784 |
| WMUR–TV | 5,192,179 | 37,510 | 54,000 | 45,755 |
| WLOS | 3,762,204 | 27,180 | 27,150 | 27,165 |
| WLOV–TV | 609,526 | 4,403 | 4,450 | 4,427 |
| WLOX | 1,182,149 | 8,540 | 4,450 | 6,495 |
| WLPX–TV | 1,021,171 | 7,377 | 13,550 | 10,464 |
| WLS–TV | 10,174,464 | 73,504 | 54,000 | 63,752 |
| WLTV–DT | 5,427,398 | 39,210 | 40,675 | 39,942 |
| WLTX | 1,597,791 | 11,543 | 13,550 | 12,547 |
| WMYA–TV | 1,577,439 | 11,396 | 27,150 | 19,273 |
| WMYD | 5,601,422 | 40,467 | 40,675 | 40,571 |
| WMYT–TV | 4,054,244 | 29,289 | 40,675 | 34,982 |
| WMYV | 3,808,852 | 27,517 | 27,150 | 27,333 |
| WNAB | 2,072,197 | 14,970 | 27,150 | 21,060 |
| WNAC–TV | 7,310,183 | 52,811 | 13,550 | 33,181 |
| WNBC | 20,064,358 | 144,952 | 54,000 | 99,476 |
| WLTZ | 689,521 | 4,981 | 4,450 | 4,716 |
| WLUC–TV | 92,246 | 666 | 4,450 | 2,558 |
| WLUK–TV | 1,251,563 | 9,042 | 13,550 | 11,296 |
| WLWT | 3,319,556 | 23,982 | 27,150 | 25,566 |
| WMAQ–TV | 9,914,395 | 71,625 | 54,000 | 62,813 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WMAR–TV | 9,203,498 | 66,489 | 27,150 | 46,820 |
| WMAZ–TV | 1,185,678 | 8,566 | 4,450 | 6,508 |
| WNBW–DT | 633,243 | 4,575 | 4,450 | 4,512 |
| WNCF | 667,683 | 4,824 | 4,450 | 4,637 |
| WNCN | 3,427,038 | 24,758 | 40,675 | 32,717 |
| WNCT–TV | 1,933,527 | 13,969 | 13,550 | 13,759 |
| WNDU–TV | 1,807,909 | 13,061 | 13,550 | 13,306 |
| WNDY–TV | 2,912,963 | 21,044 | 27,150 | 24,097 |
| WNEM–TV | 1,617,082 | 11,682 | 13,550 | 12,616 |
| WMBB | 935,027 | 6,755 | 4,450 | 5,602 |
| WMBC–TV | 18,706,132 | 135,140 | 54,000 | 94,570 |
| WMBD–TV | 733,039 | 5,296 | 4,450 | 4,873 |
| WMBF–TV | 445,363 | 3,217 | 4,450 | 3,834 |
| WMCN–TV | 10,379,045 | 74,982 | 54,000 | 64,491 |
| WMC–TV | 2,047,403 | 14,791 | 13,550 | 14,171 |
| WMDE | 6,384,827 | 46,126 | 54,000 | 50,063 |
| WNLO | 1,538,108 | 11,112 | 13,550 | 12,331 |
| WNNE | 792,551 | 5,726 | 13,550 | 9,638 |
| WNEP–TV | 73,667 | 532 | 13,550 | 7,041 |
| WNET | 20,826,756 | 150,460 | 54,000 | 102,230 |
| WNEU | 3,471,700 | 25,081 | 54,000 | 39,540 |
| WNIN | 883,322 | 6,381 | 4,450 | 5,416 |
| WNJU | 20,064,358 | 144,952 | 54,000 | 99,476 |
| WNJX–TV | 1,585,248 | 11,452 | 4,450 | 7,951 |
| WNKY | 385,619 | 2,786 | 4,450 | 3,618 |
| WPBN–TV | 411,213 | 2,971 | 4,450 | 3,710 |
| WPBT | 5,442,761 | 39,321 | 40,675 | 39,998 |
| WNOL–TV | 1,632,389 | 11,793 | 27,150 | 19,471 |
| WNPX–TV | 2,216,062 | 16,010 | 27,150 | 21,580 |
| WNSC–TV | 2,072,821 | 14,975 | 40,675 | 27,825 |
| WNTZ–TV | 338,422 | 2,445 | 4,450 | 3,447 |
| WNUV | 9,098,694 | 65,732 | 27,150 | 46,441 |
| WNWO–TV | 2,232,660 | 16,130 | 13,550 | 14,840 |
| WNYA | 1,540,430 | 11,129 | 13,550 | 12,339 |
| WNYB | 1,630,417 | 11,779 | 13,550 | 12,664 |
| WPCB–TV | 2,722,282 | 19,667 | 40,675 | 30,171 |
| WPCH–TV | 5,986,720 | 43,250 | 54,000 | 48,625 |
| WPCT | 195,270 | 1,411 | 4,450 | 2,930 |
| WPCW | 3,393,365 | 24,515 | 40,675 | 32,595 |
| WPDE–TV | 1,764,645 | 12,748 | 4,450 | 8,599 |
| WPEC | 5,788,448 | 41,818 | 27,150 | 34,484 |
| WPFO | 870,698 | 6,290 | 13,550 | 9,920 |
| WPGA–TV | 559,495 | 4,042 | 4,450 | 4,246 |
| WNYO–TV | 1,539,525 | 11,122 | 13,550 | 12,336 |
| WNYS–TV | 1,690,696 | 12,214 | 13,550 | 12,882 |
| WNYT | 1,967,183 | 14,212 | 13,550 | 13,881 |
| WNYW | 20,307,995 | 146,712 | 54,000 | 100,356 |
| WOAI–TV | 2,457,441 | 17,753 | 27,150 | 22,452 |
| WOAY–TV | 569,330 | 4,113 | 4,450 | 4,282 |
| WOFL | 3,941,895 | 28,478 | 40,675 | 34,576 |
| WPGH–TV | 3,132,507 | 22,630 | 40,675 | 31,653 |
| WPGX | 425,098 | 3,071 | 4,450 | 3,761 |
| WPHL–TV | 10,421,216 | 75,287 | 54,000 | 64,643 |
| WPIX | 20,638,932 | 149,103 | 54,000 | 101,552 |
| WPLG | 5,587,129 | 40,363 | 40,675 | 40,519 |
| WPMI–TV | 1,467,869 | 10,604 | 13,550 | 12,077 |
| WPNT | 3,130,920 | 22,619 | 40,675 | 31,647 |
| WOGX | 1,112,408 | 8,036 | 4,450 | 6,243 |
| WOI–DT | 1,212,356 | 8,759 | 13,550 | 11,154 |
| WOIO | 3,821,233 | 27,606 | 40,675 | 34,140 |
| WOLE–DT | 2,896,629 | 20,926 | 4,450 | 12,688 |
| WOLF–TV | 3,006,606 | 21,721 | 13,550 | 17,635 |
| WOLO–TV | 2,635,115 | 19,037 | 13,550 | 16,294 |
| WOOD–TV | 2,507,053 | 18,112 | 27,150 | 22,631 |
| WOPX–TV | 3,826,498 | 27,644 | 40,675 | 34,160 |
| WPPX–TV | 8,206,117 | 59,284 | 54,000 | 56,642 |
| WPRI–TV | 7,306,169 | 52,782 | 13,550 | 33,166 |
| WPSD–TV | 883,812 | 6,385 | 13,550 | 9,967 |
| WPSG | 10,232,988 | 73,927 | 54,000 | 63,963 |
| WPTA | 1,083,373 | 7,827 | 4,450 | 6,138 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WPTV–TV | 5,840,102 | 42,191 | 27,150 | 34,671 |
| WPTZ | 792,551 | 5,726 | 13,550 | 9,638 |
| WPVI–TV | 13,926,891 | 100,613 | 54,000 | 77,306 |
| WORA–TV | 2,733,629 | 19,749 | 4,450 | 12,099 |
| WOST | 1,193,381 | 8,621 | 4,450 | 6,536 |
| WOTF–TV | 3,288,537 | 23,758 | 40,675 | 32,216 |
| WOTV | 2,277,566 | 16,454 | 27,150 | 21,802 |
| WOWK–TV | 1,176,043 | 8,496 | 13,550 | 11,023 |
| WOWT | 1,380,979 | 9,977 | 13,550 | 11,763 |
| WPWR–TV | 9,957,301 | 71,935 | 54,000 | 62,968 |
| WPXA–TV | 6,594,205 | 47,639 | 54,000 | 50,819 |
| WPXC–TV | 1,561,014 | 11,277 | 27,150 | 19,214 |
| WPXD–TV | 5,133,364 | 37,085 | 40,675 | 38,880 |
| WPXE–TV | 3,163,550 | 22,855 | 27,150 | 25,002 |
| WPXG–TV | 2,577,848 | 18,623 | 54,000 | 36,312 |
| WPAN | 637,347 | 4,604 | 13,550 | 9,077 |
| WPBF | 3,190,307 | 23,048 | 27,150 | 25,099 |
| WPXK–TV | 1,907,446 | 13,780 | 13,550 | 13,665 |
| WPXL–TV | 1,566,829 | 11,319 | 27,150 | 19,235 |
| WPXM–TV | 5,206,059 | 37,610 | 40,675 | 39,143 |
| WPXN–TV | 20,465,198 | 147,848 | 54,000 | 100,924 |
| WPXP–TV | 5,565,072 | 40,204 | 27,150 | 33,677 |
| WPXQ–TV | 3,281,532 | 23,707 | 13,550 | 18,628 |
| WPXR–TV | 1,300,747 | 9,397 | 13,550 | 11,474 |
| WPXH–TV | 1,495,586 | 10,805 | 27,150 | 18,977 |
| WPXI | 480,916 | 3,474 | 40,675 | 22,075 |
| WPXJ–TV | 2,257,059 | 16,306 | 13,550 | 14,928 |
| WREX | 2,303,027 | 16,638 | 4,450 | 10,544 |
| WRFB | 2,674,527 | 19,322 | 4,450 | 11,886 |
| WRGB | 2,886,233 | 20,851 | 13,550 | 17,201 |
| WRGT–TV | 3,252,046 | 23,494 | 13,550 | 18,522 |
| WRIC–TV | 1,996,265 | 14,422 | 13,550 | 13,986 |
| WRLH–TV | 1,950,292 | 14,090 | 13,550 | 13,820 |
| WPXS | 1,152,104 | 8,323 | 40,675 | 24,499 |
| WPXT | 760,491 | 5,494 | 13,550 | 9,522 |
| WPXU–TV | 690,613 | 4,989 | 13,550 | 9,270 |
| WPXV–TV | 1,905,128 | 13,763 | 27,150 | 20,457 |
| WPXW–TV | 8,091,469 | 58,456 | 54,000 | 56,228 |
| WPXX–TV | 1,562,675 | 11,289 | 13,550 | 12,420 |
| WQAD–TV | 1,079,594 | 7,799 | 4,450 | 6,125 |
| WRNN | 19,853,836 | 143,431 | 54,000 | 98,716 |
| WROC–TV | 1,187,949 | 8,582 | 13,550 | 11,066 |
| WRPT | 110,009 | 795 | 4,450 | 2,622 |
| WRPX–TV | 2,218,968 | 16,031 | 40,675 | 28,353 |
| WRSP–TV | 904,190 | 6,532 | 13,550 | 10,041 |
| WRTV | 2,919,683 | 21,093 | 27,150 | 24,121 |
| WRUA | 2,905,193 | 20,988 | 4,450 | 12,719 |
| WQCW | 1,319,392 | 9,532 | 13,550 | 11,541 |
| WQED | 3,270,764 | 23,629 | 40,675 | 32,152 |
| WQHA | 1,052,107 | 7,601 | 4,450 | 6,025 |
| WQHS–DT | 3,837,316 | 27,722 | 40,675 | 34,199 |
| WQMY | 410,269 | 2,964 | 13,550 | 8,257 |
| WQOW | 369,066 | 2,666 | 4,450 | 3,558 |
| WQPX–TV | 1,515,992 | 10,952 | 13,550 | 12,251 |
| WSAV–TV | 1,000,315 | 7,227 | 13,550 | 10,388 |
| WSAW–TV | 652,442 | 4,713 | 4,450 | 4,582 |
| WSAZ–TV | 1,184,629 | 8,558 | 13,550 | 11,054 |
| WSBK–TV | 7,161,406 | 51,737 | 54,000 | 52,868 |
| WSBS–TV | 42,952 | 310 | 40,675 | 20,493 |
| WSBT–TV | 1,691,194 | 12,218 | 13,550 | 12,884 |
| WSB–TV | 1,504,105 | 10,866 | 54,000 | 32,433 |
| WQRF–TV | 1,326,695 | 9,585 | 4,450 | 7,017 |
| WQTO | 2,864,201 | 20,692 | 4,450 | 12,571 |
| WRAL–TV | 3,643,511 | 26,322 | 40,675 | 33,499 |
| WRAZ | 3,605,228 | 26,045 | 40,675 | 33,360 |
| WRBL | 1,493,140 | 10,787 | 4,450 | 7,618 |
| WRBU | 2,737,188 | 19,774 | 40,675 | 30,225 |
| WRBW | 4,025,123 | 29,079 | 40,675 | 34,877 |
| WRCB | 1,587,742 | 11,470 | 13,550 | 12,510 |
| WRC–TV | 8,001,448 | 57,805 | 54,000 | 55,903 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WRDC | 3,624,288 | 26,183 | 40,675 | 33,429 |
| WSCG | 867,516 | 6,267 | 13,550 | 9,909 |
| WSCV | 5,465,435 | 39,484 | 40,675 | 40,080 |
| WSEE–TV | 556,533 | 4,021 | 4,450 | 4,235 |
| WSES | 1,548,117 | 11,184 | 4,450 | 7,817 |
| WSET–TV | 1,569,722 | 11,340 | 13,550 | 12,445 |
| WSFA | 1,168,636 | 8,443 | 4,450 | 6,446 |
| WSFL–TV | 5,316,261 | 38,407 | 40,675 | 39,541 |
| WSFX–TV | 928,247 | 6,706 | 4,450 | 5,578 |
| WSIL–TV | 672,560 | 4,859 | 13,550 | 9,204 |
| WSJV | 1,522,499 | 10,999 | 13,550 | 12,275 |
| WRDQ | 3,931,023 | 28,399 | 40,675 | 34,537 |
| WRDW–TV | 1,564,584 | 11,303 | 4,450 | 7,877 |
| WREG–TV | 1,642,307 | 11,865 | 13,550 | 12,707 |
| WSNS–TV | 9,914,395 | 71,625 | 54,000 | 62,813 |
| WSOC–TV | 1,119,856 | 8,090 | 40,675 | 24,383 |
| WSPX–TV | 1,106,838 | 7,996 | 13,550 | 10,773 |
| WSST–TV | 345,428 | 2,495 | 4,450 | 3,473 |
| WSTE–DT | 3,723,967 | 26,903 | 4,450 | 15,677 |
| WSKY–TV | 1,934,585 | 13,976 | 27,150 | 20,563 |
| WSLS–TV | 1,440,376 | 10,406 | 13,550 | 11,978 |
| WSMH | 2,339,224 | 16,899 | 13,550 | 15,225 |
| WSMV–TV | 2,447,769 | 17,684 | 27,150 | 22,417 |
| WTNZ | 1,722,805 | 12,446 | 13,550 | 12,998 |
| WTOC–TV | 993,098 | 7,175 | 13,550 | 10,362 |
| WTOG | 4,796,964 | 34,655 | 40,675 | 37,665 |
| WTOK–TV | 410,134 | 2,963 | 4,450 | 3,706 |
| WSTM–TV | 1,458,931 | 10,540 | 13,550 | 12,045 |
| WSTR–TV | 3,252,460 | 23,497 | 27,150 | 25,323 |
| WSUR–DT | 3,716,312 | 26,848 | 4,450 | 15,649 |
| WSVI | 50,601 | 366 | 4,450 | 2,408 |
| WSVN | 5,588,760 | 40,375 | 40,675 | 40,525 |
| WSWB | 1,500,450 | 10,840 | 13,550 | 12,195 |
| WSWG | 363,166 | 2,624 | 4,450 | 3,537 |
| WSYM–TV | 1,516,677 | 10,957 | 4,450 | 7,704 |
| WTOL | 4,184,020 | 30,227 | 13,550 | 21,888 |
| WTOM–TV | 83,379 | 602 | 4,450 | 2,526 |
| WTOV–TV | 3,892,886 | 28,124 | 4,450 | 16,287 |
| WTPX–TV | 255,972 | 1,849 | 4,450 | 3,150 |
| WTRF–TV | 2,941,511 | 21,251 | 4,450 | 12,850 |
| WTSF | 593,934 | 4,291 | 13,550 | 8,920 |
| WTSP | 116,070 | 839 | 40,675 | 20,757 |
| WTTA | 5,450,176 | 39,374 | 40,675 | 40,025 |
| WSYR–TV | 1,329,933 | 9,608 | 13,550 | 11,579 |
| WSYT | 1,878,638 | 13,572 | 13,550 | 13,561 |
| WSYX | 2,635,937 | 19,043 | 27,150 | 23,096 |
| WTAE–TV | 1,815,300 | 13,114 | 40,675 | 26,895 |
| WTAJ–TV | 1,080,523 | 7,806 | 4,450 | 6,128 |
| WTAP–TV | 472,761 | 3,415 | 4,450 | 3,933 |
| WTAT–TV | 1,153,279 | 8,332 | 13,550 | 10,941 |
| WTCE–TV | 2,600,584 | 18,788 | 27,150 | 22,969 |
| WTEN | 1,768,667 | 12,778 | 13,550 | 13,164 |
| WTGS | 967,792 | 6,992 | 13,550 | 10,271 |
| WTTE | 2,636,341 | 19,046 | 27,150 | 23,098 |
| WTTG | 8,070,491 | 58,304 | 54,000 | 56,152 |
| WTTK | 2,817,698 | 20,356 | 27,150 | 23,753 |
| WTTO | 1,817,151 | 13,128 | 27,150 | 20,139 |
| WTTV | 2,362,145 | 17,065 | 27,150 | 22,108 |
| WTTW | 9,729,982 | 70,293 | 54,000 | 62,146 |
| WTVA | 717,035 | 5,180 | 4,450 | 4,815 |
| WTVC | 1,579,628 | 11,412 | 13,550 | 12,481 |
| WTVD | 4,012,851 | 28,990 | 40,675 | 34,833 |
| WTVF | 1,839,337 | 13,288 | 27,150 | 20,219 |
| WTHI–TV | 928,934 | 6,711 | 4,450 | 5,580 |
| WTHR | 2,988,174 | 21,588 | 27,150 | 24,369 |
| WTIC–TV | 5,314,290 | 38,392 | 27,150 | 32,771 |
| WTIN–TV | 3,714,547 | 26,835 | 4,450 | 15,643 |
| WTKR | 2,142,272 | 15,477 | 27,150 | 21,313 |
| WTLF | 349,696 | 2,526 | 4,450 | 3,488 |
| WTLH | 1,038,086 | 7,500 | 4,450 | 5,975 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WTLJ | 1,622,365 | 11,721 | 27,150 | 19,435 |
| WTLV | 1,757,600 | 12,698 | 27,150 | 19,924 |
| WTVG | 4,274,274 | 30,879 | 13,550 | 22,214 |
| WTVH | 1,350,223 | 9,755 | 13,550 | 11,652 |
| WTVI | 2,853,540 | 20,615 | 40,675 | 30,645 |
| WTVJ | 5,458,451 | 39,434 | 40,675 | 40,054 |
| WTVM | 1,498,667 | 10,827 | 4,450 | 7,638 |
| WTVO | 1,409,708 | 10,184 | 4,450 | 7,317 |
| WTVQ–DT | 989,180 | 7,146 | 13,550 | 10,348 |
| WTVR–TV | 1,808,516 | 13,065 | 13,550 | 13,308 |
| WTVT | 5,475,385 | 39,556 | 40,675 | 40,116 |
| WTMJ–TV | 3,010,678 | 21,750 | 27,150 | 24,450 |
| WTNH | 7,845,782 | 56,681 | 27,150 | 41,915 |
| WTVZ–TV | 2,156,534 | 15,580 | 27,150 | 21,365 |
| WTWC–TV | 1,032,942 | 7,462 | 4,450 | 5,956 |
| WTWO | 737,757 | 5,330 | 4,450 | 4,890 |
| WTXF–TV | 1,477,715 | 10,676 | 54,000 | 32,338 |
| WTXL–TV | 1,054,514 | 7,618 | 4,450 | 6,034 |
| WUCW | 3,664,480 | 26,474 | 40,675 | 33,574 |
| WUHF | 1,152,580 | 8,327 | 13,550 | 10,938 |
| WTVW | 791,430 | 5,718 | 4,450 | 5,084 |
| WTVX | 2,962,933 | 21,405 | 27,150 | 24,278 |
| WTVY | 974,532 | 7,040 | 4,450 | 5,745 |
| WVIZ | 3,638,440 | 26,285 | 40,675 | 33,480 |
| WVLA–TV | 1,897,179 | 13,706 | 13,550 | 13,628 |
| WVLT–TV | 1,874,453 | 13,542 | 13,550 | 13,546 |
| WVNS–TV | 911,630 | 6,586 | 4,450 | 5,518 |
| WVNY | 721,176 | 5,210 | 13,550 | 9,380 |
| WVOZ–TV | 1,132,932 | 8,185 | 4,450 | 6,317 |
| WUJA | 2,638,361 | 19,060 | 4,450 | 11,755 |
| WUNI | 7,209,571 | 52,085 | 54,000 | 53,042 |
| WUPA | 5,946,477 | 42,960 | 54,000 | 48,480 |
| WUPL | 1,632,100 | 11,791 | 27,150 | 19,470 |
| WUPV | 1,654,049 | 11,949 | 13,550 | 12,750 |
| WUPW | 2,074,890 | 14,990 | 13,550 | 14,270 |
| WUPX–TV | 1,147,454 | 8,290 | 13,550 | 10,920 |
| WVPX–TV | 4,165,601 | 30,094 | 40,675 | 35,384 |
| WVSN | 2,869,888 | 20,733 | 4,450 | 12,592 |
| WVTA | 1,232,486 | 8,904 | 13,550 | 11,227 |
| WVTB | 454,244 | 3,282 | 13,550 | 8,416 |
| WVTM–TV | 1,876,825 | 13,559 | 27,150 | 20,354 |
| WVTV | 2,999,694 | 21,671 | 27,150 | 24,410 |
| WVUE–DT | 1,658,125 | 11,979 | 27,150 | 19,564 |
| WUSA | 8,970,526 | 64,806 | 54,000 | 59,403 |
| WUTF–TV | 8,557,497 | 61,823 | 54,000 | 57,911 |
| WUTR | 526,114 | 3,801 | 4,450 | 4,125 |
| WUTV | 1,405,230 | 10,152 | 13,550 | 11,851 |
| WUVC–DT | 3,528,124 | 25,488 | 40,675 | 33,082 |
| WUVG–DT | 2,203,405 | 15,918 | 54,000 | 34,959 |
| WUXP–TV | 2,316,872 | 16,738 | 27,150 | 21,944 |
| WVAH–TV | 1,373,707 | 9,924 | 13,550 | 11,737 |
| WVBT | 1,848,277 | 13,353 | 27,150 | 20,251 |
| WVCY–TV | 3,117,342 | 22,521 | 27,150 | 24,835 |
| WVVA | 1,035,752 | 7,483 | 4,450 | 5,966 |
| WVXF | 85,191 | 615 | 4,450 | 2,533 |
| WWAY | 1,206,281 | 8,715 | 4,450 | 6,582 |
| WWBT | 1,911,854 | 13,812 | 13,550 | 13,681 |
| WWCP–TV | 2,811,278 | 20,310 | 4,450 | 12,380 |
| WWCW | 1,404,553 | 10,147 | 13,550 | 11,849 |
| WWDP | 5,792,048 | 41,844 | 54,000 | 47,922 |
| WWHO | 2,879,726 | 20,804 | 27,150 | 23,977 |
| WWJ–TV | 5,374,064 | 38,824 | 40,675 | 39,750 |
| WWJX | 518,866 | 3,748 | 13,550 | 8,649 |
| WVEA–TV | 4,283,915 | 30,949 | 40,675 | 35,812 |
| WVEC | 2,179,223 | 15,744 | 27,150 | 21,447 |
| WVEN–TV | 3,607,540 | 26,062 | 40,675 | 33,369 |
| WVEO | 1,153,382 | 8,332 | 4,450 | 6,391 |
| WVER | 760,072 | 5,491 | 13,550 | 9,521 |
| WVFX | 731,193 | 5,282 | 4,450 | 4,866 |
| WVII–TV | 368,022 | 2,659 | 4,450 | 3,554 |

TABLE 3[1]—FY 2019 FULL-POWER BROADCAST TELEVISION REGULATORY FEES BY CALL SIGN—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended: ½ Pop. fee ½ DMA fee |
|---|---|---|---|---|
| WVIR–TV | 1,944,353 | 14,047 | 4,450 | 9,248 |
| WWLP | 3,838,272 | 27,729 | 4,450 | 16,090 |
| WWL–TV | 1,756,442 | 12,689 | 27,150 | 19,920 |
| WWMB | 1,460,406 | 10,551 | 4,450 | 7,500 |
| WWMT | 2,460,942 | 17,779 | 27,150 | 22,464 |
| WWNY–TV | 365,677 | 2,642 | 4,450 | 3,546 |
| WWOR–TV | 19,853,836 | 143,431 | 54,000 | 98,716 |
| WWPX–TV | 3,892,904 | 28,124 | 54,000 | 41,062 |
| WWSB | 3,340,133 | 24,130 | 40,675 | 32,403 |
| WVIT | 4,963,855 | 35,861 | 27,150 | 31,505 |
| WWTW | 9,729,982 | 70,293 | 54,000 | 62,146 |
| WWUP–TV | 116,638 | 843 | 4,450 | 2,646 |
| WXII–TV | 3,434,637 | 24,813 | 27,150 | 25,982 |
| WXIN | 2,721,639 | 19,662 | 27,150 | 23,406 |
| WXIX–TV | 2,825,570 | 20,413 | 27,150 | 23,781 |
| WXLV–TV | 4,362,761 | 31,518 | 27,150 | 29,334 |
| WXMI | 191,107 | 1,381 | 27,150 | 14,265 |
| WXOW | 425,378 | 3,073 | 4,450 | 3,762 |
| WXPX–TV | 4,566,037 | 32,987 | 40,675 | 36,831 |
| WWSI | 11,012,279 | 79,557 | 54,000 | 66,778 |
| WWTI | 196,531 | 1,420 | 4,450 | 2,935 |
| WWTV | 1,034,174 | 7,471 | 4,450 | 5,961 |
| WXCW | 1,749,847 | 12,642 | 13,550 | 13,096 |
| WXIA–TV | 6,179,680 | 44,644 | 54,000 | 49,322 |
| WYOU | 3,553,761 | 25,674 | 13,550 | 19,612 |
| WYOW | 91,233 | 659 | 4,450 | 2,555 |
| WYPX–TV | 1,167,975 | 8,438 | 13,550 | 10,994 |
| WYTV | 2,068,935 | 14,947 | 4,450 | 9,698 |
| WYZZ–TV | 1,042,140 | 7,529 | 4,450 | 5,989 |
| WXTX | 700,123 | 5,058 | 4,450 | 4,754 |
| WXXA–TV | 1,775,667 | 12,828 | 13,550 | 13,189 |
| WXXV–TV | 1,178,251 | 8,512 | 4,450 | 6,481 |
| WXYZ–TV | 5,591,434 | 40,395 | 40,675 | 40,535 |
| WYDC | 393,843 | 2,845 | 4,450 | 3,648 |
| WYDO | 1,097,745 | 7,931 | 13,550 | 10,740 |
| WYFF | 2,586,888 | 18,689 | 27,150 | 22,919 |
| WYMT–TV | 1,180,276 | 8,527 | 13,550 | 11,038 |
| WZBJ | 1,606,844 | 11,608 | 13,550 | 12,579 |
| WZDX | 1,557,490 | 11,252 | 13,550 | 12,401 |
| WZMQ | 73,423 | 530 | 4,450 | 2,490 |
| WZPX–TV | 2,094,029 | 15,128 | 27,150 | 21,139 |
| WZRB | 952,279 | 6,880 | 13,550 | 10,215 |
| WZTV | 2,311,143 | 16,697 | 27,150 | 21,923 |
| WZVI | 55,804 | 403 | 4,450 | 2,427 |
| WZVN–TV | 1,916,098 | 13,843 | 13,550 | 13,696 |
| WZZM | 1,574,546 | 11,375 | 27,150 | 19,263 |

[1] Table 3 is also available as a spreadsheet on the Commission's website at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees,* including the Facility Identification number and DMA for each call sign.

TABLE 3 CONTINUED—ADDITIONAL CALL SIGNS NOT INCLUDED PREVIOUSLY IN APPENDIX C

| Call sign | Population | Population based fee | DMA based fee | Blended ½ Pop. fee & ½ DMA fee |
|---|---|---|---|---|
| KAZA–TV | 11,151,141 | $80,560 | $54,000 | $67,280 |
| KBEH | 17,343,236 | 125,294 | 54,000 | 89,647 |
| KEMO–TV | 5,097,701 | 36,828 | 54,000 | 45,414 |
| KHSL–TV | 627,256 | 4,532 | 4,450 | 4,491 |
| KOFY–TV | 5,097,701 | 36,828 | 54,000 | 45,414 |
| KPNX | 4,216,950 | 30,465 | 40,675 | 35,570 |
| KSMS–TV | 1,251,045 | 9,038 | 4,450 | 6,744 |
| KTLN–TV | 5,209,087 | 37,632 | 54,000 | 45,816 |
| KTNC–TV | 8,048,427 | 58,145 | 54,000 | 56,072 |
| KXLN–DT | 6,078,071 | 43,910 | 54,000 | 48,955 |
| WBMM | 577,653 | 4,173 | 4,450 | 4,312 |
| WCWG | 3,434,637 | 24,813 | 27,150 | 25,982 |
| WDCW | 8,155,998 | 58,922 | 54,000 | 56,461 |
| WGGN–TV | 1,991,462 | 14,387 | 40,675 | 27,531 |
| WGGS–TV | 2,163,321 | 15,629 | 13,550 | 14,589 |

TABLE 3 CONTINUED—ADDITIONAL CALL SIGNS NOT INCLUDED PREVIOUSLY IN APPENDIX C—Continued

| Call sign | Population | Population based fee | DMA based fee | Blended ½ Pop. fee & ½ DMA fee |
|---|---|---|---|---|
| WJAL | 8,970,526 | 64,806 | 54,000 | 59,403 |
| WLLA | 2,041,934 | 14,752 | 27,150 | 20,951 |
| WLOO | 917,998 | 6,632 | 13,550 | 10,091 |
| WLVI | 7,319,659 | 52,880 | 54,000 | 53,440 |
| WLWC | 3,281,532 | 23,707 | 13,550 | 18,628 |
| WMLW–TV | 1,822,297 | 13,165 | 27,150 | 20,157 |
| WPMT | 2,412,561 | 17,429 | 27,150 | 22,290 |
| WSPA–TV | 3,393,072 | 24,513 | 13,550 | 19,031 |
| WTCV | 3,254,481 | 23,512 | 4,450 | 13,981 |
| WTVE | 4,027,248 | 29,094 | 54,000 | 41,547 |
| WUAB | 3,821,233 | 27,606 | 40,675 | 34,140 |
| WUTB | 8,509,757 | 61,478 | 27,150 | 44,314 |
| WUVN | 1,132,445 | 8,181 | 27,150 | 17,666 |
| WUVP–DT | 10,421,216 | 75,287 | 54,000 | 64,643 |
| WWJE–DT | 7,209,571 | 52,085 | 54,000 | 53,042 |
| WXBU | 3,046,418 | 22,008 | 27,150 | 24,579 |
| WXFT–DT | 10,174,464 | 73,504 | 54,000 | 63,752 |
| WXTV–DT | 19,992,096 | 144,430 | 54,000 | 99,215 |
| WYCI | 34,169 | 247 | 13,550 | 6,898 |
| WYCW | 3,393,072 | 24,513 | 13,550 | 19,031 |
| WZME | 5,996,408 | 43,320 | 54,000 | 48,660 |

In order to calculate individual service fees for FY 2019, we adjusted FY 2018 payment units for each service to more accurately reflect expected FY 2019 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2019 estimates with actual FY 2018 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2019 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2019 payment units are based on FY 2018 actual payment units, it does not necessarily mean that our FY 2019 projection is exactly the same number as in FY 2018. We have either rounded the FY 2019 number or adjusted it slightly to account for these variables.

TABLE 4—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2019

| Fee category | Sources of payment unit estimates |
|---|---|
| Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed (Units are Licenses). | Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis. |
| CMRS Cellular/Mobile Services (Units are Subscribers or Telephone #s). | Based on WTB projection reports, and FY 2018 payment data. |
| CMRS Messaging Services (Units are Subscribers or Telephone #s). | Based on WTB reports, and FY 2018 payment data. |
| AM/FM Radio Stations (Units are Licensed Stations). | Based on CDBS data, adjusted for exemptions, and actual FY 2018 payment units. |
| Digital TV Stations (Combined VHF/UHF units) (Units are Licensed Stations). | Based on CDBS data, adjusted for exemptions, and actual FY 2018 payment units. |
| AM/FM/TV Construction Permits (Units are Holders of Permits). | Based on CDBS data, adjusted for exemptions, and actual FY 2018 payment units. |
| LPTV, Translators and Boosters, Class A Television (Units are Licensed Stations or Facilities). | Based on CDBS data, adjusted for exemptions, and actual FY 2018 payment units. |
| BRS (formerly MDS/MMDS) | Based on WTB reports and actual FY 2018 payment units. |
| LMDS (Units are Holders of Licenses) | Based on WTB reports and actual FY 2018 payment units. |
| Cable Television Relay Service (CARS) Stations (Units are Holders of Licenses). | Based on data from Media Bureau's COALS database and actual FY 2018 payment units. |
| Cable Television System Subscribers, Including IPTV Subscribers (Units are Subscribers). | Based on publicly available data sources for estimated subscriber counts and actual FY 2018 payment units. |

TABLE 4—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2019—Continued

| Fee category | Sources of payment unit estimates |
|---|---|
| Interstate Telecommunication Service Providers (Units are Revenues). | Based on FCC Form 499–Q data for the four quarters of calendar year 2018, the Wireline Competition Bureau projected the amount of calendar year 2018 revenue that will be reported on 2018 FCC Form 499–A worksheets due in April 2019. |
| Earth Stations (Units are Licensed Earth Stations). | Based on International Bureau (''IB'') licensing data and actual FY 2018 payment units. |
| Space Stations (GSOs & NGSOs) (Units are Licensed and Operational Satellites). | Based on IB data reports and actual FY 2018 payment units. |
| International Bearer Circuits (Units are Gbps Circuits). | Based on IB reports and submissions by licensees, adjusted as necessary. |
| Submarine Cable Licenses (Units are Submarine Cable Systems). | Based on IB license information. |

**Table 5**

*Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages*

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

**Table 6**

*Summary of Regulatory Fee Categories*

Media Bureau

The fee categories associated with the Media Bureau are as follows:

AM and FM Broadcast Radio Stations

1. The AM/FM broadcast radio station regulatory fees are based on population served and class of station. This grid showing the AM and FM regulatory fees based on population served and class of station has been modified over time to take into account a trend toward increases in population and more powerful signal strength.[1] In general, stations with greater populations (*e.g.,* Metropolitan areas) pay higher fees than stations located in rural areas with lower populations.

AM and FM Construction Permits That Were Granted for AM/FM Radio Stations

2. AM and FM Construction Permits (CP) are precursors to obtaining a license. These permits are granted so that the studio, the antenna, and other relevant aspects of the station can be constructed before a license is issued by the Commission.

Digital Full Service Television Broadcast Stations (Including Satellite Stations)

3. Digital full-service television broadcast stations, including satellite stations, are historically categorized by their Nielsen Designated Market Areas (DMA). In section D, below, we seek comment on changing this methodology for FY 2019.

Low Power TV, Class A TV, and TV/FM Translators and Boosters

4. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 of the Commission's rules which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority.

5. Translators are generally not affiliated with commercial broadcasters, are nonprofit, unprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served.

[1] *See, e.g., FY 2017 Report and Order*, 32 FCC Rcd at 7069, paragraph 28; *FY 2016 Report and Order*, 31 FCC Rcd at 10351, paragraph 33; *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15986–87, paragraph 4 (2003) (*FY 2003 Report and Order*).

Cable Antenna Relay Service (CARS)

6. CARS stations are used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System.

Cable Television, IPTV, and DBS (Currently, a Subcategory of Cable Television and IPTV)

7. Regulatory fees for FY 2019 for cable television, internet Protocol Television (IPTV), and DBS are based on the number of subscribers as of December 31, 2018. The cable television category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's rules. IPTV is digital television delivered through a high speed internet connection, instead of by the traditional cable method. IPTV service generally is offered bundled with the customer's internet and telephone or VoIP services. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. The two DBS providers, AT&T [2] and DISH Network, are MVPDs.[3] This regulatory fee subcategory was based on Media Bureau FTE activity involving regulation and oversight of all MVPDs, which included DBS providers.[4] In 2015, the Commission included DBS as a subcategory of the cable television/IPTV regulatory fee. In section C, *supra,* we seek comment in this proceeding on adopting new regulatory fees for FY 2019 for DBS.

Wireline Competition Bureau

8. The regulatory fees for Wireline Competition Bureau regulatees are in the ITSP fee category. Toll Free Numbers are a subcategory of the ITSP category. Audio bridging service providers are also included in the ITSP category.

ITSP

9. The regulatory fees for ITSP are based on revenues from interexchange service. On April 1st of each year, ITSP providers file FCC Form 499–A with USAC based on their FCC Form 499–Q (Quarterly) information. The FCC Form 499–A filing is the basis for the total amount of revenues upon which regulatory fees will be assessed, excluding exempt revenue from cooperatives, satellites, and wireless companies. For FY 2019, the ITSP fee rate is calculated by dividing the target revenue goal by the non-exempt revenue reported in the FCC Form 499–A.[5] The resulting figure is the ITSP fee factor that regulatees will multiply against specific revenue lines on FCC Form 499–A to determine their regulatory fee assessment.

Toll Free

10. In the *FY 2014 Report and Order,*[6] the Commission adopted a regulatory fee category for each toll free number managed by a Responsible Organization or RespOrg.[7] In the *FY 2015 Report and Order,* the Commission first adopted a regulatory fee to be assessed per toll free number.[8] The Commission obtains a specific toll-free number count from SOMOS [9] for each operating RespOrg.

Wireless Telecommunications Bureau

11. The fee categories associated with the Wireless Telecommunications Bureau are as follows:

CMRS

12. CMRS is a service providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. Each licensee in this group pays an annual regulatory fee for each mobile or cellular unit (mobile or telephone number) assigned to its customers, including resellers of its services. The most common use of cellular spectrum is mobile voice and data services, including cell phone, text messaging, and internet service. Cellular licenses are issued by market areas and channel blocks. Part 22 paging (messaging services) [10] is also considered a CMRS service. Because the customer base continues on a long-term decline, the paging services fee has been frozen at eight cents per subscriber since FY 2002.[11]

Other Wireless Services, Subject to Multiyear Fees

13. In addition to CMRS, there are eight wireless services whose licensees pay regulatory fees. These multiyear fees are paid in advance and for the amount of the ten year term of the license.[12]

14. *Microwave.* Common carrier microwave stations, authorized under part 101 of the Commission's rules, are generally used in a point-to-point configuration for long-haul backbone connections or to connect points on the telephone network which cannot be connected using standard wire line or fiber optic because of cost or terrain. These systems are also used to connect cellular sites to the telephone network and to relay television signals.

15. *Marine, ship and coast.* Maritime Mobile Services are authorized in part 80 of the Commission's rules.[13] A ship station includes all the transmitting and receiving equipment installed aboard a ship for communications afloat. Depending on the size and other factors, the ship radio station must meet certain

[2] AT&T and DIRECTV merged in 2015. *See Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations,* Memorandum Opinion and Order, 30 FCC Rcd 9131 (2015).

[3] MVPD is defined in section 602(13) of the Act, 47 U.S.C. 522(13).

[4] *FY 2015 NPRM,* 30 FCC Rcd at 5367–68, paragraph 31.

[5] The ITSP fee category represents 30.41% of the total regulatory fees assessed, which when multiplied by the overall regulatory fee goal of $339 million, results in the ITSP target revenue goal of $103.107 million. The Commission in FY 2019 estimates that the ITSP unit count is $32.2 billion. The revenue target goal of $103.107 divided by $32.2 billion results in an ITSP fee factor of $.00320.

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767, 10777–79, paragraphs 25–28 (2014) *(FY 2014 Report and Order).* We adopted this category for working, assigned, and reserved toll free numbers and for toll free numbers that are in the ''transit'' status, or any other status as defined in section 52.103 of the Commission's rules. The regulatory fee is limited to toll free numbers that are accessible within the United States.

[7] A RespOrg is a company that manages toll free telephone numbers for subscribers. RespOrgs use the SMS/800 database to verify the availability of specific numbers and to reserve the numbers for subscribers. *See* 47 CFR 52.101(b). Commission FTEs in the Wireline Competition Bureau and the Enforcement Bureau work on toll free numbering issues and other related activities. As a result, the Commission adopted a regulatory fee for each toll free number controlled or managed by a RespOrg because many toll free numbers are controlled or managed by RespOrgs that are not carriers, and therefore, had not been paying regulatory fees. In the *FY 2014 Report and Order,* the Commission stated that: ''Based on evaluation, the FTEs involved in toll free issues are primarily from the Wireline Competition Bureau. . . . Accordingly, a regulatory fee assessed on toll free numbers reduces the ITSP regulatory fee total.'' *FY 2014 Report and Order,* 29 FCC Rcd at 10778, paragraph 27 (footnote omitted).

[8] *FY 2015 Report and Order,* 30 FCC Rcd at 10271–72, paragraph 9.

[9] SOMOS is an organization that grants toll-free numbers to Responsible Organizations.

[10] CMRS messaging replaced the CMRS one-way paging fee category. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* Report and Order, 12 FCC Rcd 17161, 17184–85, paragraph 60 (1997) *(FY 1997 Report and Order).*

[11] *See FY 2003 Report and Order,* 18 FCC Rcd at 15992, paragraph 21.

[12] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005,* Report and Order, 20 FCC Rcd 12259, 12267, paragraph 26 (2005) *(FY 2005 Report and Order).*

[13] 47 CFR part 80.

requirements established by law or treaty. Marine coast stations serve the maritime community as commercial mobile radio service providers, permitting ships to send and receive messages and to interconnect with the public switched telephone network. In addition to providing needed services for a fee, public coast stations have obligations to monitor distress frequencies and to relay messages free of charge to search and rescue personnel.

16. *Rural Radio.* The Rural Radiotelephone Service is in the 152–159 MHz and 454–460 MHz spectrum bands and authorized under part 22 of the Commission's rules. Rural Radiotelephone spectrum is used to provide analog telephone service to subscribers in locations too remote for traditional wireline service.

17. *PLMRS, exclusive use and shared use.* Private land mobile radio systems (PLMRS), authorized under Part 90 of the Commission's rules, are used by companies, local governments, and other organizations to meet a wide range of communication requirements. These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations and include radiolocation services, industrial radio services, and land transportation radio services.[14]

18. *Aviation, aircraft and ground.* The Aviation Services are authorized in part 87 of the Commission's rules.[15] Aircraft radio stations include all types of radio transmitting equipment used aboard an aircraft, *e.g.,* two-way radiotelephones, radar, radio navigation equipment, and emergency locator transmitters. The primary purpose of aircraft radio equipment is to ensure safety of aircraft in flight.

Broadband Radio Service (BRS) and Local Multipoint Distribution Service (LMDS)

19. Broadband Radio Service and Local Multipoint Distribution Services are authorized under parts 27 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. BRS and LMDS fees are assessed at the same fee rate and on a per license basis.

International Bureau

20. The fee categories associated with the International Bureau are as follows:

Space Stations and Earth Stations

21. The International Bureau's oversight and regulation of the satellite industry involves FTEs working on legal, technical, and policy issues pertaining to both space station and earth station operations and is therefore interdependent to some degree.[16] For FY 2019, regulatory fees must be paid for licensed earth stations and for geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2018.

International Bearer Circuits

22. We assess regulatory fees on international bearer circuits (IBCs) which consist of terrestrial and satellite[17] and submarine cable.[18] The IBC regulatory fees are calculated by apportioning the revenue requirement between (1) terrestrial and satellite[19] and (2) submarine cable;[20] 12.4 percent of total IBC fees are allocated for terrestrial and satellite IBC fees and 87.6 per cent are allocated for submarine cable fees. The proposed FY 2019 submarine cable regulatory fees are paid on a per cable landing license basis[21] based on circuit capacity as of December 31, 2018. The submarine cable regulatory fee methodology is based on an industry proposal adopted in 2009.[22] The proposed methodology for the FY 2019 terrestrial and satellite IBC regulatory fees is discussed in detail in section E below.

FY 2018 regulatory fees for the first eight fee categories below are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

[14] We note that prior section 9(b)(1)(A) listed as examples of factors related to ''benefits provided'' a regulate to include ''service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.'' Current sections 9 and 9A do not mention shared use versus exclusive use.

[15] 47 CFR part 87.

[16] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014,* Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, 29 FCC Rcd 6417, 6428, paragraph 29 (2014) *(FY 2014 NPRM).*

[17] Regulatory fees for terrestrial and satellite IBCs are paid based on active (used or leased) international bearer circuits as of December 31, 2018 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. Active circuits include backup and redundant circuits as of December 31, 2018. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits.

[18] Submarine cables provide the primary means of connectivity—voice, data and internet—between the United States and the rest of the world as well as connectivity between the mainland United States and consumers in Alaska, Hawaii, Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

[19] Initially, this fee category was for common carrier IBCs. The Commission added non-common carrier satellite IBCs in this regulatory fee category in 1997. *See FY 1997 Report and Order,* 12 FCC Rcd at 17189, paragraph 71. More recently, the Commission added non-common carrier terrestrial IBCs in this regulatory fee category in 2017. *See FY 2017 Report and Order,* 32 FCC Rcd at 7071–72, paragraphs 34–35.

[20] The submarine cable regulatory fee includes services provided to common carriers using the submarine cables, in addition to the International Bureau's regulatory activity concerning submarine cables, such as the bureau's review, analysis, and grant of applications for submarine cable landing license applications, as well as transfers, assignments, and modifications. *See FY 2015 Report and Order,* 30 FCC Rcd at 10273, paragraph 12. The bureau also coordinates processing of submarine cable landing license applications with the relevant Executive Branch agencies. and the bureau's services provided to common carriers using the submarine cable circuits, include benchmarks enforcement, protection from anticompetitive actions by foreign carriers, foreign ownership rulings (Petitions for Declaratory Rulings, or PDRs), section 214 authorizations, and bilateral and multilateral negotiations and representation of U.S. interests at international organizations. *See FY 2015 Report and Order,* 30 FCC Rcd at 10273, paragraph 12.

[21] A cable landing license must be obtained prior to landing a submarine cable to connect the continental United States with any foreign country; Alaska, Hawaii or the U.S. territories or possessions with a foreign country, the continental United States, or with each other; and points within the continental United States, Alaska, Hawaii or a territory or possession in which the cable is laid within international waters.

[22] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009) *(Submarine Cable Order*).

TABLE 7—FY 2018 SCHEDULE OF REGULATORY FEES

| Fee category | FY 2018 annual regulatory fee (U.S. $s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | $25 |
| Microwave (per license) (47 CFR part 101) | 25 |
| Marine (Ship) (per station) (47 CFR part 80) | 15 |
| Marine (Coast) (per license) (47 CFR part 80) | 40 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 10 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 10 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 10 |
| Aviation (Ground) (per license) (47 CFR part 87) | 20 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .20 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27) | 600 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 600 |
| AM Radio Construction Permits | 550 |
| FM Radio Construction Permits | 965 |
| Digital TV (47 CFR part 73) VHF and UHF Commercial | |
| Markets 1–10 | 49,750 |
| Markets 11–25 | 37,450 |
| Markets 26–50 | 25,025 |
| Markets 51–100 | 12,475 |
| Remaining Markets | 4,100 |
| Construction Permits | 4,100 |
| Satellite Television Stations (All Markets) | 1,500 |
| Low Power TV, Class A TV, TV/FM Trans. & Boosters (47 CFR part 74) | 380 |
| CARS (47 CFR part 78) | 1,075 |
| Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV | .77 |
| Direct Broadcast Service (DBS) (per subscriber) (as defined by section 602(13) of the Act) | .48 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00291 |
| Toll Free (per toll free subscriber) (47 CFR 52.101(f) of the rules) | .10 |
| Earth Stations (47 CFR part 25) | 325 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 127,850 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 122,775 |
| International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit) | 176 |
| Submarine Cable Landing Licenses Fee (per cable system) | See Table Below |

FY 2018 RADIO STATION REGULATORY FEES

| Population served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| <=25,000 | $880 | $635 | $550 | $605 | $965 | $1,100 |
| 25,001–75,000 | 1,325 | 950 | 825 | 910 | 1,450 | 1,650 |
| 75,001–150,000 | 1,975 | 1,425 | 1,250 | 1,350 | 2,175 | 2,475 |
| 150,001–500,000 | 2,975 | 2,150 | 1,850 | 2,050 | 3,250 | 3,725 |
| 500,001–1,200,000 | 4,450 | 3,225 | 2,775 | 3,050 | 4,875 | 5,575 |
| 1,200,001–3,000,00 | 6,700 | 4,825 | 4,175 | 4,600 | 7,325 | 8,350 |
| 3,000,001–6,000,00 | 10,025 | 7,225 | 6,275 | 6,900 | 11,000 | 12,525 |
| >6,000,000 | 15,050 | 10,850 | 9,400 | 10,325 | 16,500 | 18,800 |

FY 2018 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE

| Submarine cable systems (capacity as of December 31, 2017) | Fee amount for FY 2018 |
|---|---|
| <50 Gbps | $9,850 |
| 50 Gbps or greater, but less than 250 Gbps | 19,725 |
| 250 Gbps or greater, but less than 1,000 Gbps | 39,425 |
| 1,000 Gbps or greater, but less than 4,000 Gbps | 78,875 |
| 4000 Gbps or greater | 157,750 |

## VII. Initial Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission prepared this Initial Regulatory Flexibility Analysis

[1] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Stat. 847 (1996).

(IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking *(NPRM).* Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *NPRM.* The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

*A. Need for, and Objectives of, the Notice*

54. The *NPRM* seeks comment regarding adopting proposed regulatory fees for Fiscal Year 2019. The proposed regulatory fees are attached to the *NPRM* in Tables 2 and 3. This regulatory fee *NPRM* is needed each year because the Commission is required by Congress to adopt regulatory fees each year ''to recover the costs of carrying out the activities described in section 6(a) only to the extent, and in the total amounts, provided for in Appropriation Acts.'' [4] The objective of the *NPRM* is to propose regulatory fees for fiscal year 2019 and adopt regulatory fee reform to improve the regulatory fee process. The *NPRM* seeks comment on the Commission's proposed regulatory fees for fiscal year (FY) 2019. The *NPRM* proposes to collect $339,000,000 in regulatory fees for FY 2019, as detailed in the proposed fee schedules in Table 2, including a proposed increase in the DBS fee rate to 60 cents per subscriber and proposed fees for full-power broadcast televisions using an average of the actual population covered by the station's contour and the Nielsen Designated Market Area (DMA)-based fee, as set forth in Table 3. Historically, the regulatory fee for full-power broadcast television stations was based on the DMA groupings 1–10, 11–25, 26–50, 51–100, and the remaining markets (101–210), as well as satellite stations that traditionally pay a much lower fee. Additionally, the *NPRM* seeks comment on replacing our existing annual de minimis threshold of $1000 with a new section 9(e)(2) annual regulatory fee exemption of $1,000.

*B. Legal Basis*

55. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended.[5]

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

56. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] 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.[9]

57. Small Entities. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.[10] As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.[11] In addition, a ''small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.[12] In addition, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [13] U.S. Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.[14] We estimate that, of this total, as many as 89,327 entities may qualify as ''small governmental jurisdictions.'' [15] Thus, we estimate that most local government jurisdictions are small.

58. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable and IPTV) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [16] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[17] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[18] Thus, under this size standard, the majority of firms in this industry can be considered small.

59. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest

[2] 5 U.S.C. 603(a).

[3] *Id.*

[4] 47 U.S.C. 159(a).

[5] 47 U.S.C. 154(i) and (j), 159, 159A, and 303(r).

[6] 5 U.S.C. 603(b)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[9] 15 U.S.C. 632.

[10] *See* 5 U.S.C. 601(3)–(6).

[11] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.*

[12] 5 U.S.C. 601(4).

[13] 5 U.S.C. 601(5).

[14] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.*

[15] The 2011 U.S. Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local governmental organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. *See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.* If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789,237 are small.

[16] *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[17] *See* 13 CFR 120.201, NAICS code 517110.

[18] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

applicable NAICS code category is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] According to census data from 2012, there were 3,117 establishments that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[20] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the *NPRM.*

60. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[21] According to census data from 2012, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[22] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[23] Of this total of 1,307 incumbent local exchange service providers, an estimated 1,006 operated with 1,500 or fewer employees.[24] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules proposed in this *NPRM.*

61. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[25] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[26] Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[27] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[28] Also, 72 carriers have reported that they are Other Local Service Providers.[29] Of this total, 70 have 1,500 or fewer employees.[30] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in this *NPRM.*

62. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[31] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[32] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[33] Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules proposed in this *NPRM.*

63. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[34] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[35] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[36] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[37] All 193 carriers have 1,500 or fewer employees.[38] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules proposed in this *NPRM.*

64. Local Resellers. Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[39] Census data for 2012 show that 1,341 firms provided resale services during that year. [40] Of that number, 1,341 operated with fewer than 1,000 employees.[41] Under this category and the associated small business size

[19] 13 CFR 121.201, NAICS code 517110.

[20] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[21] 13 CFR 121.201, NAICS code 517110.

[22] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[23] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (September 2010) *(Trends in Telephone Service).*

[24] *See id.*

[25] 13 CFR 121.201, NAICS code 517110.

[26] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[27] *See Trends in Telephone Service,* at Table 5.3.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] 13 CFR 121.201, NAICS code 517110.

[32] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[33] *See Trends in Telephone Service,* at Table 5.3.

[34] *http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[35] 13 CFR 121.201, NAICS code 517911.

[36] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[37] *See Trends in Telephone Service,* at Table 5.3.

[38] *Id.*

[39] 13 CFR 121.201, NAICS code 517911.

[40] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[41] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[42] Of this total, an estimated 211 have 1,500 or fewer employees.[43] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules proposed in this *NPRM.*

65. Toll Resellers. The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[44] Under that size standard, such a business is small if it has 1,500 or fewer employees.[45] Census data for 2012 show that 1,341 firms provided resale services during that year.[46] Of that number, 1,341 operated with fewer than 1,000 employees.[47] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[48] Of this total, an estimated 857 have 1,500 or fewer employees.[49] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules proposed in the *NPRM.*

66. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[50] Census data for 2012 shows that there were 3,117 firms that operated that year.[51] Of this total, 3,083 operated with fewer than 1,000 employees.[52] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[53] Of these, an estimated 279 have 1,500 or fewer employees.[54] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the *NPRM.*

67. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[55] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.[56] Of this total, 955 firms had fewer than 1,000 employees.[57] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[58] Of this total, an estimated 261 have 1,500 or fewer employees.[59] Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules proposed in this *NPRM.*

68. Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.''[60] 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 Television Broadcasting firms: Those having $38.5 million or less in annual receipts.[61] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,387.[62] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[63] We therefore estimate that the majority of commercial television broadcasters are small entities.

69. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[64] 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

[42] *See Trends in Telephone Service,* at Table 5.3.

[43] *Id.*

[44] 13 CFR 121.201, NAICS code 517911.

[45] *Id.*

[46] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[47] *Id.*

[48] *Trends in Telephone Service,* at Table 5.3.

[49] *Id.*

[50] 13 CFR 121.201, NAICS code 517110.

[51] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[52] *Id.*

[53] *Trends in Telephone Service,* at Table 5.3.

[54] *Id.*

[55] NAICS code 517210. *See http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[56] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[57] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[58] *Trends in Telephone Service,* at Table 5.3.

[59] *Id.*

[60] U.S. Census Bureau, 2012 NAICS code Economic Definitions, *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[61] 13 CFR 121.201, NAICS code 515120.

[62] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC–311837A1.pdf.*

[63] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[64] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

70. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[65] These stations are non-profit, and therefore considered to be small entities.[66] There are also 2,528 low power television stations, including Class A stations (LPTV).[67] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

71. Radio Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [68] The SBA has established a small business size standard for this category, which is: Such firms having $38.5 million or less in annual receipts.[69] U.S. Census data for 2012 show that 2,849 radio station firms operated during that year.[70] Of that number, 2,806 operated with annual receipts of less than $25 million per year.[71] According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, the majority of such entities are small entities.

72. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[72] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[73] It is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

73. Cable Television and other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature, *e.g.,* limited format, such as news, sports, education, or youth-oriented. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[74] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year.[75] Of this total, 319 operated with annual receipts of less than $25 million.[76] Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules proposed in this *NPRM.*

74. Cable Companies and Systems. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[77] Industry data indicate that there are currently 4,600 active cable systems in the United States.[78] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[79] In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[80] Current Commission records show 4,600 cable systems nationwide.[81] Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[82] Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

75. Cable System Operators (Telecom Act Standard). The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [83] There are approximately 52,403,705 cable video subscribers in the United States today.[84] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[85] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[86] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[87] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

[65] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[66] *See generally* 5 U.S.C. 601(4), (6). Noncommercial television stations are not required to pay regulatory fees. 47 U.S.C. 159(e)(1)(C).

[67] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[68] *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[69] 13 CFR 121.201, NAICS code 515112.

[70] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[71] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[72] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1).

[73] 13 CFR 121.102(b) (an SBA regulation).

[74] *https://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[75] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[76] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.*

[77] 47 CFR 76.901(e).

[78] August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See www/fcc.gov/coals.*

[79] *See* SNL KAGAN at *www.snl.com/interactiveX/top cableMSOs aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc.*

[80] 47 CFR 76.901(c).

[81] *See* footnote 2, *supra.*

[82] August 5, 2015 report from the Media Bureau based on its research in COALS. *See www.fcc.gov/coals.*

[83] 47 CFR 76.901 (f) and notes ff. 1, 2, and 3.

[84] *See* SNL KAGAN at *www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.*

[85] 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

[86] *See* SNL KAGAN at *www.snl.com/Interactivex/TopCable MSOs.aspx.*

[87] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 47 CFR 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

76. Direct Broadcast Satellite (DBS) Service. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VOIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[88] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[89] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[90] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: AT&T and DISH Network.[91] AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that DBS service is provided only by large firms.

77. All Other Telecommunications. ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or Voice over internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[92] The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less.[93] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[94] Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the proposals in the *NPRM* can be considered small.

78. RespOrgs. Responsible Organizations, or RespOrgs, are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber.[95] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

79. Carrier RespOrgs. Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers,[96] and Wireless Telecommunications Carriers (except satellite).[97]

80. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[98] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[99] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[100] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

81. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[101] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[102] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[103] Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

82. Non-Carrier RespOrgs. Neither the Commission, the U.S. Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related to

[88] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[89] NAICs code 517110; 13 CFR 121.201.

[90] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[91] *See 15th Annual Video Competition Report,* 28 FCC Rcd at 1057, section 27.

[92] *http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.*

[93] 13 CFR 121.201; NAICs code 517919.

[94] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[95] *See* 47 CFR 52.101(b).

[96] 13 CFR 121.201, NAICS code 517110.

[97] *Id.*

[98] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[99] 13 CFR 120,201, NAICS code 517110.

[100] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[101] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[102] 13 CFR 120.201, NAICS code 517120.

[103] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

Advertising'' [104] and ''Other Management Consulting Services.'' [105]

83. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).[106] The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less.[107] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,612 operated with annual receipts of less than $10 million.[108] Based on that data we conclude that the majority of Non-Carrier RespOrgs who provide toll-free number (TFN)-related advertising services are small.

84. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[109] The SBA has established a size standard for this industry of $15 million dollars or less.[110] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[111] Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.[112]

85. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016 there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.

*D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

86. This *NPRM* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

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

87. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[113]

88. This *NPRM* seeks comment on the Commission's regulatory fee collection for Fiscal Year 2019, as required by Congress each year. Specifically, the Commission asks for comment each year in the Regulatory Flexibility Analysis on how to minimize adverse economic impact, imposed by our proposed rules, on small entities. Additionally, this year the Commission sought comment on how modifications to section 9 of the Communications Act in the RAY BAUM'S Act, impacted the Commission's core responsibilities under the statute. As discussed in the order, the Commission remains charged with ensuring that regulatory fees will result in collections of amounts that can reasonably be expected to equal amounts appropriated by Congress for each fiscal year.[114] We find that the scheme as articulated under the RAY BAUM'S Act is closely aligned to how the Commission implemented its authority under the prior version of section 9 of the Communications Act.

89. The *NPRM* seeks comment on the Commission's proposed regulatory fees for fiscal year (FY) 2019. The *NPRM* proposes to collect $339,000,000 in regulatory fees for FY 2019, as detailed in the proposed fee schedules in Table 2, including an increase in the DBS fee rate to 60 cents per subscriber. DBS providers are not small entities. The *NPRM* seeks comment on changing the methodology for assessing regulatory fees for full-power broadcast television stations to use an average of the actual population and the DMA-based rate. The *NPRM* also seeks comment on its proposal to continue to base non-common carrier and common carrier satellite and terrestrial IBC fees on the per Gbps rate in Table 2, which would be $121 for FY 2019. This proposal would ensure that satellite and terrestrial IBC fees remain proportional to the size of the regulated entity and avoid unreasonable increases in such regulatory fees on small entities. The *NPRM* also seeks comment on replacing our existing annual de minimis threshold of $1,000 with a new section 9(e)(2) annual regulatory fee exemption of $1,000. This exemption will reduce burdens on small entities with regulatory fees that total $1,000 or less than $1,000.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

90. None.

## VIII. Ordering Clause

91. Accordingly, *it is ordered* that, pursuant to the authority found in Sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted.*

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2019–10922 Filed 6–4–19; 8:45 am]

**BILLING CODE 6712–01–P**

[104] 13 CFR 120.201, NAICS code 541890.

[105] 13 CFR 120.201, NAICS code 541618.

[106] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[107] 13 CFR 120.201, NAICS code 541890.

[108] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[109] *http://www.census,gov/cgi-bin/sssd/naics.naicsrch.*

[110] 13 CFR 120.201, NAICS code 514618.

[111] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[112] The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

[113] 5 U.S.C. 603(c)(1)–(c)(4).

[114] 47 U.S.C. 159(a) (''shall assess and collect regulatory fees''), 159(b) (''Commission shall assess and collect regulatory fees at such rates as the Commission shall establish in a schedule of regulatory fees that will result in the collection, in each fiscal year, of an amount that can reasonably be expected to equal the amounts described in subsection (a) with respect to such fiscal year.''). *See also* 47 U.S.C. 156(b).

# FEDERAL REGISTER

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Part IV

## Department of Veterans Affairs

38 CFR Part 17

Veterans Community Care Program; Final Rule

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900–AQ46**

## Veterans Community Care Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) adopts as final a proposed rule amending its regulations that govern VA health care. This final rule implements its authority from the VA MISSION ACT of 2018 for covered veterans to receive necessary hospital care, medical services, and extended care services from non-VA entities or providers in the community.

**DATES:** *Effective Date:* This rule is effective on June 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joseph Duran, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, Ptarmigan at Cherry Creek, Denver, CO 80209; *Joseph.Duran2@va.gov,* (303) 370–1637. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 6, 2018, the President signed into law the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (hereafter referred to as the ''MISSION Act,'' Pub. L. 115–182, 132 Stat. 1395, as amended). This final rule implements section 101 of the MISSION Act, which requires VA to implement a Veterans Community Care Program to furnish required care and services to covered veterans through eligible entities and providers. Section 101, which amends 38 U.S.C. 1703 upon the effective date of these final regulations, further establishes the conditions under which VA determines if covered veterans are eligible to elect to receive such care and services through eligible entities or providers, as well as other parameters of the Veterans Community Care Program. This final rule implements in a regulatory framework the requirements in amended section 1703, consistent with the mandate in section 101(c) of the MISSION Act that VA promulgate regulations to carry out the Veterans Community Care Program. For the sake of convenience and understanding, we will refer to provisions of section 1703 as it will be amended on June 6, 2019, the effective date of this final rule. We additionally clarify that throughout this final rule, the abbreviation U.S.C. or the term section will be used to indicate discussion of or reference to a statutory provision in the United States Code (*e.g.,* section 1703) or in another statute, while the abbreviation CFR or the section symbol § will be used to indicate discussion of or reference to an existing or proposed regulatory provision in the Code of Federal Regulations (*e.g.,* § 17.4005 as proposed). There may be instances where the term section rather than the section symbol must be used at the beginning of a sentence to discuss or reference a regulatory provision, but it should be clear in the sentence that a regulatory provision is at issue. In general, any reference to a section that uses a period in it (*e.g.,* § 17.55) is a reference to the CFR, while any reference without such a period (*e.g.,* section 1703) is a reference to the U.S.C.

VA published a proposed rule regarding the criteria for determining when covered veterans may elect to receive care and services through community health care entities or providers, as well as other parameters of the program, on February 22, 1019. 84 FR 5629. In response to this proposed rule, VA received 23,557 comments. Over 18,000 comments were duplicated form responses that expressed strong support for the overall rulemaking, with some suggestions for substantive revisions to provisions from the proposed rule. We received 1,297 comments that were unique in that they were not duplicated form responses in support of or in opposition to at least one portion of the proposed rule, although VA did consider substantive issues raised in such duplicated comments. More than 700 comments expressed support for the proposed rule, in whole or in part, without substantive comment on provisions in the proposed rule. We appreciate the support of such comments, and do not address them below. Other comments expressed support or disapproval, in whole or in part, with substantive provisions in the proposed rule, and we discuss those comments and applicable revisions from the proposed rule below. We note that the discussion below is organized by the sequential order of the provisions as presented in the proposed rule, from §§ 17.4000 through 17.4040. As many of the comments we received were related to the access standards as proposed, we alert readers that the discussion on access standards can be found under the last section header § 17.4040 in this final rule, near the end of the **SUPPLEMENTARY INFORMATION** section of this published document.

We make two technical corrections to the proposed revisions to §§ 17.46 and 17.55 to clarify the sunset date of these regulations as they apply to VA's community care program such that these will not apply to care furnished after June 6, 2019.

### § 17.4000, Purpose and Scope

We received over 200 comments that did not relate to specific provisions of the proposed rule, but that related to the overall effect that implementation of the Veterans Community Care Program (VCCP) would have on either: (1) The care and services that VA directly furnishes, or (2) the U.S. healthcare industry at large. We discuss these comments in the context of § 17.4000(a) as proposed, because § 17.4000(a) established that §§ 17.4000 through 17.4040 would generally implement the VCCP as authorized by 38 U.S.C. 1703.

With regard to the effects on the care and services that VA directly furnishes, commenters expressed concern that implementation of the VCCP would deplete VA's allotted budgetary resources and thereby negatively impact VA's ability to directly furnish care and services to veterans (some comments referred to this impact as the ''privatization of VA''). Commenters offered multiple reasons why implementation of VCCP would negatively affect VA's direct provision of care, all stemming from the assumptions that more covered veterans would choose VA community care if access to such care were expanded, which would then create a decreased need to fund VA's direct provision of care (*i.e.,* provision of care in a VA facility). A few comments further stated that decreased funding of VA's direct provision of care would be unavoidable unless such care was funded separately from the VCCP (presumably, separately funded by Congress specifically through the Federal appropriation process). Many of these comments further argued that, rather than potentially expand the provision of non-VA care in the community through implementation of the VCCP, VA should focus on improving its own infrastructure, hiring practices, and quality of care and services it directly provides. Some of these comments additionally provided more specific suggestions for how VA could use resources required to implement the VCCP to instead improve VA's direct provision of care and services (*e.g.,* VA could hire additional specific types of providers or increase pay scales for its providers generally; or VA could open additional VA facilities, expand or improve its existing facilities, or expand sharing agreements with non-VA facilities).

We do not disagree with portions of these comments requesting that VA look

to improving its direct delivery of care and services; indeed, a portion of the proposed rule that was organized under a header titled improving VA (*see* 84 FR 5629, 5645–5646) discussed how the MISSION Act will assist VA in doing so. We do not, however, make any changes to § 17.4000 or any other part of the rule as proposed based on these comments. Section 1703 requires VA to implement the VCCP and to establish the conditions under which VA would determine if covered veterans are eligible to elect to receive such care and services through eligible entities or providers (*see* sections 1703(a)(1) and (d)). Section 1703(a)(1) establishes a program to furnish hospital care, medical services, and extended care services to covered veterans through eligible entities and providers; it is VA's responsibility to implement the VCCP. Section 1703(d)(3) creates a key condition on the operation of the VCCP: that the covered veteran must elect to receive care in the community, versus through VA. This election was further identified and explained in §§ 17.4000(b), 17.4010, and 17.4020(a) as proposed. VA's obligation to implement the VCCP does not diminish VA's obligation to directly provide care and services to eligible individuals as otherwise required by title 38 U.S.C, particularly for covered veterans who are eligible for but do not elect to receive care through the VCCP or veterans who are not eligible to receive care through the VCCP. As Congress appropriates funding for VA, VA will use those resources to implement the requirements Congress has set forth. The regulatory impact analysis for this final rule and VA's budget requests identify our anticipated needs, and we will closely monitor utilization of our available resources.

With regard to the effects that implementation of the VCCP would have on the U.S. healthcare industry at large, we find such comments generally beyond the scope of the rule where they do not relate to VA's direct provision of care and services or VA's ability to maintain its other core missions. For instance, some comments asserted that covered veterans seeking non-VA care could displace non-veteran patients that rely on other Federal health care coverage (*i.e.,* Medicare or Medicaid), particularly if VA did not consider potential reductions to other Federal health care funding in developing the proposed rule. Conversely, other comments expressed concern that implementation of the VCCP could put covered veterans seeking non-VA care in the position to compete with non-veteran patients who have private insurance, because non-VA providers simply will not have the capacity to absorb covered veterans as additional patients. We do not make changes to the rule based on these comments that relate to the potential effects that VCCP implementation may have on capacity of non-VA providers to see patients, either to a covered veteran's advantage or disadvantage when compared with other patient cohorts as asserted by the comments. However, we believe that the contracts, agreements, or other arrangements VA enters with eligible entities and providers will help to ensure provider availability for covered veterans who elect to receive care through the VCCP; we have no reason to believe that the effect, if any, on non-veteran patients would be significant. We similarly do not make changes based on comments that generally argued that expansion of eligibility for VA community care could create increased consolidation of health care markets in a manner to require VA to pay higher rates for non-VA care. We do not believe our actions in implementing the VCCP will have that significant of an effect on the health care industry. According to the National Health Expenditure Data set, the United States spent $3.5 trillion on health care in 2017. By comparison, VA obligated $12.9 billion for community care in FY 2017 or 17.8 percent of total VA Medical Care spending. As for other comments that specifically noted that implementation of the VCCP could have detrimental effects on the U.S. health care industry at large because VA would not be able to maintain its core missions of research and health care provider and clinician training, VA's obligation to implement the VCCP does not diminish VA's obligation to fulfill any of its core missions as otherwise required by title 38 U.S.C.

**§ 17.4005, Definitions**

We received more than ten comments that either suggested revisions to or clarification of some terms defined in the proposed rule, or that requested VA define additional terms. We address these comments below as they relate to the terms in the order they were presented in § 17.4005 as proposed.

One comment requested revision of the definition of the term appointment to expressly include telehealth and same-day encounters. While we believe the definition of appointment as proposed did include telehealth and same-day encounters (by using the separately defined term schedule), we agree with the suggestion to revise the definition to expressly add these terms. The definition of appointment is therefore revised to include telehealth and same-day encounters.

A few comments requested revisions to the term covered veteran. The term covered veteran as proposed is identical to the statutory definition in section 1703(b), which is limited to veterans. We reiterate from the proposed rule that the regulations at §§ 17.4000–17.4040 do not affect other VA authorities to provide care or services for non-veterans. Therefore, VA's limited authority to furnish care or services for non-veterans is generally not affected by regulations that implement the VCCP. Other comments requested that VA add a regulatory citation to 38 CFR 17.37(c) to the definition of covered veteran, as this regulatory citation corresponds to the statutory citation 38 U.S.C. 1705(c)(2) in the definition that authorizes eligibility for certain veterans who do not have to enroll prior to receiving VA care. We agree with the commenter that providing a relevant regulatory citation for these certain veterans would make the definition more consistent, as the definition does include the regulatory citation for § 17.36 as it relates to those veterans who do have an affirmative requirement to enroll prior to receiving care. We therefore revise the definition of covered veteran to reference 38 CFR 17.37(a)–(c), which implement section 1705(c)(2) related to veterans who may receive VA care without first enrolling in VA's system of patient enrollment. We do not further revise the definition as requested to require enrollment for these certain veterans as a condition of receiving non-VA care under the VCCP, because that is not a requirement of section 1703 and believe such a revision could frustrate efforts to assist veterans transitioning from service in the Armed Forces.

One comment requested revision of the term eligible entity and provider to expressly include the standards by which VA will assess these entities and providers for adequacy, such as assessment for compliance with VA's access standards as proposed, or compliance with other Federal laws such as the Americans with Disabilities Act. We do not make changes to the definition based on this comment, as the definition itself references the relevant section related to entities and providers, § 17.4030 as proposed. We will discuss comments related to entities and providers in the section of the final rule related to § 17.4030.

In the definition of episode of care, VA's only substantive proposed change from the definition used in § 17.1505 regarding the Veterans Choice Program

was to remove the qualifying language that stated the one-year duration for the episode began from the date of the first appointment with a non-VA health care provider. We received one comment that requested we add this qualifying language back to the definition, to ensure it was clear that an episode of care included follow-up appointments and ancillary and specialty care as needed. We do not make any changes based on this comment, as the definition as proposed expressly included follow-up appointments and ancillary and specialty services.

A few comments requested revisions to the term extended care services. Some comments stated that defining the term extended care services by referencing its applicable authority at 38 U.S.C. 1710B was insufficient to indicate what services were covered under the VCCP, particularly to ensure coverage of certain extended care services that comments asserted were not covered by Medicare (such as adult day health care). Other comments more specifically stated that the definition should expressly list the types of extended care services that would be covered, with some comments further advocating for inclusion of particular services such as assisted living, or hourly nursing services provided by home health agencies. We do not make changes based on these comments. We believe the reference in the definition to section 1710B(a) is sufficient to indicate the types of extended care services covered because it does provide a specific listing of services that encompasses both institutional and non-institutional extended care services (section 1710B(a)(4), for example, references adult day health care directly). Moreover, we see two benefits to referencing the statutory authority instead of defining it further in this rule. First, such a change would allow for any amendments to the law (section 1710B) to have automatic effect on this rule, and second, VA's interpretation of that provision of law will also automatically carry over to this rule.

A few comments requested clarification of or revisions to the definition of full-service VA medical facility. One comment requested clarification of what a full-service VA medical facility was. We reiterate from the proposed rule that this term means a VA medical facility that provides hospital care, emergency medical services, and surgical care and having a surgical complexity designation of at least standard. This definition includes a note that states that VA maintains a website with a list of the facilities that have been designated with at least a surgical complexity of standard, which can be accessed on VA's website. One commenter indicated that this note was not adequately specific and should provide the exact hyperlink where this information can be found. We do not make changes based on this comment, as we do not want to create a gap in our regulations should VA's website locations change in the future. For the public's awareness, as of the publication of this final rule, this information can currently be found at *www.va.gov/health/surgery*. Another commenter stated that the definition should be revised to expressly include inpatient and outpatient mental health services to ensure that veterans (particularly in rural and remote areas) have access to such services. The definition of a full-service VA medical facility is only relevant for determinations of veteran eligibility under § 17.4010(a)(2) as proposed, which, consistent with section 1703(d)(1)(B), means that covered veterans are eligible for VCCP if they reside in a State where VA does not operate a full-service VA medical facility. Therefore, while we understand the comment's concern that not including a specific type of care in the definition would seem to affect eligibility for the VCCP, we note that veterans requiring inpatient or outpatient mental health services may be eligible under one of the other five eligibility criteria in § 17.4010(a)(1) and (a)(3) through (6) as proposed, should a facility meet the requirements of this definition for full-service medical facility but not have inpatient or outpatient mental health services. We also note that the exclusion of a listed service from the definition of full-service medical facility is not intended to indicate that such services are not available from these facilities—to the contrary, the existence of services that are included in the definition, such as surgical services, tends to indicate that such facilities are more complex medical facilities that offer many services such as mental health, primary care, and many forms of specialty care, etc.

One comment requested that VA add a new definition regarding the best medical interest of the covered veteran, to assist in clarifying this concept for the purposes of determining eligibility for the VCCP under § 17.4010(a)(5) as proposed. We do not make changes to the definitions section based on this comment, although we will address the comment's concern regarding clarification of the best medical interest eligibility criterion in our consideration of comments on § 17.4010, which discusses eligibility for the VCCP.

One comment requested clarification of the terms hospital care and medical services, specifically seeking clarification of the explanation for the terms that was provided in the preamble of the proposed rule. The preamble of the proposed rule explained these terms in part by referring to the medical benefits package at § 17.38(b), where hospital care and medical services will be provided only if determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. We clarify, as requested by this comment, that appropriate healthcare professionals can mean both VA and non-VA providers but are not making any revisions to the regulations.

The definition of the term other health care plan contract as proposed included language that stated such contracts did not include a policy, contract, agreement, or similar arrangement pursuant to 10 U.S.C. chapter 55, which is the authority for the Department of Defense TRICARE healthcare and insurance program. One comment requested a revision to this definition to remove the exclusion related to 10 U.S.C. chapter 55, to permit VA to bill TRICARE for non service-connected care provided under the VCCP. This comment asserted that VA was not legally barred from treating TRICARE as a health care plan contract for purposes of collecting reasonable charges for care or services furnished under 38 U.S.C. 1729. We do not make changes based on this comment, because we do not agree that section 1729 permits this practice. The plain language of the statute does not support the conclusion that VA may seek recovery from another Federal entity under section 1729. Specifically, TRICARE is another Federal program and, as such, does not meet the definition of ''health plan contract'' under section 1729(i)(1)(A). Additionally, while the definition of ''third party'' in section 1729(i)(3) includes a ''State or political subdivision of a State[,]'' it does not include ''a Federal entity.'' Moreover, case law does not support the conclusion that VA may seek recovery from another Federal entity under section 1729. In *United States* v. *Capital Blue Cross,* the United States Court of Appeals for the Third Circuit found that by excluding other Federal programs, such as Medicare, from the reach of section 1729, Congress avoided the ''inefficient procedure of having one

arm of the federal government reimburse the another.'' 992 F.2d 1270, 1275 (3d Cir. 1993). Finally, the legislative history of 38 U.S.C. 1729 does not support the conclusion that VA may seek recovery from another Federal entity under section 1729. See, *e.g.,* H. Rep. 99–300, (finding that no reimbursement could be obtained from Medicare or Medicaid by VA). We note that this discussion of what is permissible under section 1729 does not prevent VA from billing DoD under agreements that control the exchange of services under 38 U.S.C. 8111.

One comment requested a revision to the term residence to add language that would clarify a residence as the place the covered veteran stays on the date of the appointment. We do not make changes based on this comment, as we believe the definition as proposed, which defines a residence as where the covered veteran is staying at the time they want to receive care or services, provides for the same outcome without requiring constant monitoring by VA or updates by covered veterans. A few comments communicated that individuals who maintain more than one residence (the most common example provided was maintaining a different residence in a warmer climate during winter months, to accommodate health issues) can experience difficulties with receiving non-VA care. These comments did not suggest changes to any of the criteria or provisions in the proposed rule, so we are not making any changes as a result. We believe it is sufficient to state that the term residence in § 17.4005 as proposed does not preclude covered veterans from maintaining more than one residence at a time, but a covered veteran may have one residence at a time. Such residence is assessed in accordance with where the individual is physically staying at the time the care or services are needed.

A few comments requested that VA add a definition of unusual or excessive burden, to clarify how this term is used in the assessment of whether the best medical interest eligibility criterion is met under § 17.4010(a)(5)(vii) as proposed. We do not make changes based on these comments. This term has qualifying language in § 17.4010(a)(5)(vii)(A)–(E) that we believe is sufficient to inform these determinations, and we will address this qualifying language as raised by comments more specifically in the section of this rule that discusses eligibility.

One comment requested that VA add a definition for the term VA care coordination team to provide examples of VA staff or clinicians who comprise such a team. This comment requested this definition be added because it was used in the preamble of the proposed rule to provide an example of assessing when a covered veteran might be eligible for VCCP under § 17.4010(a)(1) as proposed, or eligibility when no VA facility offers the care or services needed. We do not make changes based on this comment. This term was used in the preamble of the proposed rule to help provide background on the types of individuals who might assist a covered veteran with understanding whether VA facilities at large might not offer certain services (such as full obstetrics care), but this term is not material to determinations of eligibility under § 17.4010(a)(1) and is not used in the regulatory text, so its addition would be superfluous.

One comment stated that the term VA facility as defined in the proposed rule was too broad to be useful for veterans to distinguish between VA facilities, and suggested that VA should instead use: The term center for non-medical facilities; the term hospital for full-service facilities; and the term clinic for all medical service facilities that are not full-service. We reiterate from the proposed rule that the term VA facility references the types of care a facility provides (*i.e.,* hospital care, medical services, or extended care services), rather than designations of VA facilities (such as a VA medical center, or community-based outpatient clinic), to ensure that any future re-designations of VA facility types would not result in a gap in our regulations. If the public is interested in how VA currently defines the scope of services available at different facility types, Veterans Health Administration (VHA) Handbook 1006.02, VHA Site Classifications and Definitions, should be instructive and is available online. Additionally, we clarify that this term is relevant for determinations of eligibility under § 17.4010, and that such determinations can only be consistently made with a broad definition that references the types of care a facility provides rather than the designation of a facility.

Lastly, one comment requested that the term VA medical service line be revised to mean a clinic within a Department medical center, to ensure that entire clinics could be designated as underperforming as needed. While the commenter's suggestion would match the definition in section 1703(o)(2), it would not clarify the meaning of that phrase for purposes of this regulation, as we believe the proposed definition does. The term clinic, in the context of health care, can have several different meanings. Merriam-Webster, for example, defines a clinic in the context of health care as a facility (as of a hospital) for diagnosis and treatment of outpatients, as well as a group practice in which several physicians work cooperatively. Merriam-Webster online, *https://www.merriam-webster.com/dictionary/clinic.* The Cambridge English Dictionary, alternatively, defines a clinic as a building or part of a hospital where people go for medical care or advice. Cambridge Dictionary online, *https://dictionary.cambridge.org/us/dictionary/english/clinic.* We believe these definitions reflect the common understandings of the term clinic, as well as the ambiguity in that term. In some contexts, a clinic is a physical structure, and in others it is an organizational component of a larger institution. We believe in the context of section 1703(o)(2) that the latter interpretation is more reasonable, as it would be illogical for Congress to define the term VA medical service line to mean a physical structure within a larger physical structure. The very term service line also reinforces conceptually that this authority is limited to a group practice in which several physicians or clinicians work cooperatively. VA policy also repeatedly uses the term service line to refer to specific practice areas, such as cardiology, radiology, oncology, and others. Each service line has different applicable access standards or standards for quality for the purposes of assessing underperformance under § 17.4015 as proposed, which could serve as a basis for eligibility for a covered veteran to participate in VCCP under § 17.4010(a)(6) as proposed. In this context, the definition of VA medical service line as proposed, to be limited to a service or set of services within a Department medical center, is more consistent with the general meaning of the term, provides clarity as to the intended effect of this provision, and more appropriately captures those types of services that are actually underperforming and not other services that could in fact be excelling. We note that it is theoretically possible, however, for all VA medical service lines within a clinic to be designated (depending on the organization of that clinic, and the assessment of such medical service lines against VA's standards, etc.), although we believe it would be unlikely that this would actually happen.

**§ 17.4010, Veteran Eligibility**

We received over 18,000 comments concerning the criteria under which VA determines a covered veteran may elect

to receive care and services under the VCCP. We address these comments below in the order in which they raise issues related to provisions in paragraphs (a)(1) through (6) of § 17.4010 as proposed. We note at the outset that the comments we received related to eligibility based on designated access standards in § 17.4010(a)(4) as proposed we be addressed in the section of this document that discusses § 17.4040 where such comments raised particular substantive issues related to the access standards. We will only discuss access standards in relation to § 17.4010 below where comments raised broad versus specific concerns regarding VA's establishment of such standards. We also note that a majority of these comments are the result of a duplicated form letter, within which at least one of the eligibility criteria from § 17.4010 as proposed was discussed.

We did not receive any comments that suggested changes to § 17.4010(a)(1) as proposed, regarding a covered veteran being eligible to receive care and services under the VCCP if no VA facility offered such care or services. However, some comments seemed to assert that this criterion could be unduly limiting if it was interpreted in a manner that barred eligibility if a single VA facility offered such care or services. One comment further requested clarification as to whether the access-related eligibility criterion in § 17.4010(a)(4) as proposed would apply if the criterion in § 17.4010(a)(1) was not met. We clarify, by reiterating from the proposed rule, that the criterion in § 17.4010(a)(1) will not be used to limit access to community care in instances where a single VA facility offers the care or services required; in such a case, covered veterans will be assessed under one of the other five eligibility criteria in § 17.4010(a)(2) through (6), for instance, the access-related criterion in § 17.4010(a)(4). The criterion in § 17.4010(a)(1) will function as a unique qualifier for covered veterans that need certain types of care that VA simply does not provide in any of its facilities (such as full obstetrics care), and any covered veteran requiring such care or services would not have to be assessed any further under other proposed eligibility criteria for community care. We do not make any changes based on these comments.

We received some comments related to § 17.4010(a)(2), regarding a covered veteran being eligible to receive care and services under the VCCP if there is not a full-service VA medical facility in the State in which the veteran resides. One comment seemed to oppose this criterion, asserting that this eligibility criterion was inappropriate because it did not consider full-service facilities across state lines that may be accessible to veterans. Another comment seemed to support this criterion, but also asserted that it was not appropriate because it did not consider that in-state transit times vary by State. We clarify that the criterion in § 17.4010(a)(2) is an assessment of VA facility locations within States, and does not consider transit times to facilities, in accordance with section 1703(d)(1)(B). This criterion is consistent with the statute, as well as prior VA practice in the Veterans Choice Program. We do not make changes based on these comments.

A few comments asserted that VA should not eliminate the 40-mile distance eligibility criterion from the former Veterans Choice Program. We interpret these comments to be expressing concern with the limited grandfathering provision in § 17.4010(a)(3)(ii) as proposed, where the 40-mile criterion will be carried forward indefinitely for some, but not all, covered veterans. We reiterate from the proposed rule that the 40-mile grandfathering provision is consistent with 38 U.S.C. 1703(d)(1)(C), where such eligibility is carried forward indefinitely for only those covered veterans that reside in Alaska, Montana, North Dakota, South Dakota, or Wyoming and meet additional criteria. Any covered veterans who do not reside in one of these States can only be considered to have grandfathered eligibility related to the 40-mile criterion until June 6, 2020. We therefore do not make any changes based on these comments, although we note that other VCCP eligibility criteria may apply for covered veterans after June 6, 2020, even if they do not reside in the States identified for the indefinite grandfathering provision.

Some comments objected to VA establishing any eligibility based on access standards under § 17.4010(a)(4) as proposed, suggesting instead that VA community care should not have any qualifying limitations related to VA's assessment of access. We do not make any changes to § 17.4010(a)(4) based on these comments. Congress authorized veterans to elect to receive community care if VA was unable to furnish care or services in a manner that complies with VA's designated access standards under section 1703(d)(1)(D). Congress further authorized the Secretary to establish access standards under section 1703B. As explained in the proposed rule, as well as our report to Congress, the Secretary is exercising his authority to establish and designate access standards for purposes of eligibility. We reiterate that we will discuss comments related to the substantive criteria of the access standards themselves from in the section related to § 17.4040 later in this document.

We received many comments related to the best medical interest criterion in § 17.4010(a)(5) as proposed. While some comments merely sought clarification of this criterion, others asserted that the covered veteran and his or her non-VA provider did not have enough control in determining when the criterion could be met, and that a determination by a non-VA provider that the criterion was met should not be subject to VA's review or approval (specifically, over 18,000 comments received were duplicate form requests that VA should not administratively or clinically review such determinations from non-VA providers). Conversely, other comments asserted that VA must retain review and approval for best medical interest determinations, or even prevent such determinations from being made by non-VA providers. Other comments more specifically suggested that certain conditions should be found to create eligibility under this criterion. For instance, some comments argued generally that a covered veteran's dissatisfaction with care they received directly from VA in the past should meet the criterion of best medical interest. Other comments suggested that certain conditions or factors should be considered to constitute an unusual or excessive burden as assessed under the best medical interest criterion in § 17.4010(a)(5)(vii), such as a veteran requiring oxygen to travel, or a veteran having experienced military sexual trauma.

We first address the issue within the comments concerning the level of review or approval that may be required to find that a determination of best medical interest has been met for purposes of eligibility for VCCP. These comments offered opposing interpretations of whether VA review or approval would (or should) be required to find that a determination of best medical interest had been met. We believe these opposing interpretations in the comments are due to an inconsistency between the preamble explanation for § 17.4010(a)(5) as published in the proposed rule and the regulation text at § 17.4010(a)(5) as proposed. The preamble of the proposed rule contained language that qualified a determination of best medical interest in § 17.4010(a)(5), by stating that such a determination must be for the purpose of the veteran achieving improved clinical outcomes by receiving the care or services in the community versus

from a VA health care provider. In turn, the preamble of the proposed rule further explained that the factors in § 17.4010(a)(5)(i)–(vii) as proposed would be considered in the context of clinical decision making (where the referring clinician could be either a VA or a non-VA clinician) to assess whether improved clinical outcomes would likely be achieved by receiving care in the community.

Although the preamble explained that the qualifying language related to a veteran's improved clinical outcomes would be in § 17.4010(a)(5) as proposed, it was inadvertently omitted by VA in the regulation text for § 17.4010(a)(5). We clarify that VA intended for this qualifying language to be in § 17.4010(a)(5) as proposed to allow VA to retain the ability to conduct a review of a best medical interest determination made by a non-VA or a VA provider if such determination did not appear to meet the standard for achieving improved clinical outcomes. To clarify this intent, we revise § 17.4010(a)(5) to add the qualifying language as stated from the preamble of the proposed rule that best medical interest determinations are made for the purpose of the veteran achieving improved clinical outcomes. We believe this revision effectuates VA's intent as evidenced in the preamble of the proposed rule. While we realize that this revision does not establish an absolute VA review of best medical interest determinations, and does not remove VA's review of these decisions as suggested in some comments, we reiterate from the preamble of the proposed rule that an assessment of best medical interest under § 17.4010(a)(5) is a clinical decision, and as such is made on a case by case basis depending on the individual circumstances of a covered veteran, to be guided by the factors further established in § 17.4010(a)(5)(i)–(vii). We believe that it is neither veteran-centric nor administratively feasible for VA to regulate an absolute requirement to review all determinations of best medical interest from non-VA or VA providers. We do not make changes to add certain specific qualifying conditions to § 17.4010(a)(5) in response to comments that requested VA consider specific conditions as meeting the best medical interest criterion (as raised earlier, conditions such as a veteran requiring oxygen to travel, or a veteran having experienced military sexual trauma). We believe that the language in § 17.4010(a)(5)(i)–(vii) is comprehensive to permit appropriate clinical decisions on a case by case basis without being overly specific or restrictive.

We received a few comments that requested clarification of how VA would distinguish between a best medical interest determination that may simply be for the convenience of the veteran (which was not permitted under § 17.4010(a)(5) as proposed), and a determination of best medical interest based on an unusual or excessive travel burden (which was permitted under § 17.4010(a)(5)(vii)). One comment further requested clarification of whether the undue or excessive burden determination was clinical in nature, and whether it could relate to the drive time access standard. To address the request to clarify when the undue or excessive burden factors in § 17.4010(a)(5)(vii)(A)–(E) might be met, we will not make changes from the proposed rule, but we clarify that VA will work to develop guidance for VA staff (that can be made available to VA and non-VA providers) regarding how VA will interpret the factors to ensure there is a consistent understanding of how the undue or excessive burden considerations are assessed and applied. As a general example, a covered veteran who requires physical therapy multiple times a week in relation to a neck injury might be considered eligible under the criterion in § 17.4010(a)(5)(vii)(C), if the veteran's injured neck is a medical condition that affects his or her ability to travel even short distances. In such a case, it would not be for the mere convenience of this veteran to be seen in the community at a location that would be closer to their residence.

We further clarify, without making changes to § 17.4010(a)(5)(vii), that the unusual or excessive burden assessment would ultimately be a clinical determination, as we previously clarified that the overarching best medical interest criterion is met when it is clinically determined that a covered veteran could be expected to experience improved clinical outcomes. Lastly, we clarify without changes that the unusual and excessive burden factors in § 17.4010(a)(5)(vii)(A)–(E) are independent of the access standard eligibility in § 17.4010(a)(4) and the standards themselves in § 17.4040; the undue and excessive burden factors might qualify a veteran for VCCP, even if the access standard related to average drive time might not be met. For example, a covered veteran could require daily dialysis care that could be furnished at a VA facility that is 29 minutes away from the veteran's residence by average drive time. If VA could furnish the care within the wait-time standard in § 17.4040, this veteran would not qualify under § 17.4010(a)(4). However, given the need for daily travel and the effect of travel for nearly an hour in transit every day, the veteran and the provider could determine it is in the best medical interest of the veteran to receive this daily dialysis care through the VCCP at a non-VA facility that is only a five-minute average drive from the veteran's home.

We received one comment related to § 17.4010(a)(6) as proposed, regarding a covered veteran being eligible to receive care and services under the VCCP if VA determined that a VA medical service line that would furnish the care or services the veteran requires is not providing such care or services in a manner that complies with VA's standards for quality. This comment asserted that VA should revise this eligibility criterion to be discretionary and not mandatory, to be consistent with 38 U.S.C. 1703(e), which is the statutory provision related to discretionary eligibility based on a finding that a VA medical service line is not providing care that complies with the standards for quality VA further establishes under section 1703C. We agree section 1703(e) authorizes and does not mandate the furnishing of care when VA medical service lines are underperforming, but we do not read our regulations in §§ 17.4010(a)(6) and 17.4015 as proposed to collectively to eliminate that discretion. Section 17.4015 permits, but does not require, the Secretary to identify underperforming VA medical service lines. It further permits the Secretary to establish limitations or conditions on the ability of veterans to elect to receive care and services in the community. If the Secretary makes a determination under § 17.4015 and identifies underperforming VA medical service lines and the conditions under which covered veterans seeking care or services from such a medical service line can elect to receive care in the community, then § 17.4010(a)(6) would apply and covered veterans could elect to receive care or services in the community consistent with the Secretary's determination. Sections 17.4010(a)(6) and 17.4015 therefore effectively preserve the discretionary nature of section 1703(e). We will address comments related to the establishment of or notice procedures for VA's standards for quality in the portion of the final rule that discusses § 17.4015.

We received one comment that requested clarification of VA's rationale to require a covered veteran to submit to VA information related to a change in the veteran's address in § 17.4010(b) as

proposed, and information on any other health-care plan contract under which the veteran is covered prior to obtaining authorization for care and services the veteran requires. We reiterate from the proposed rule that this information is required so that VA may make accurate eligibility determinations under § 17.4010(a)(2)–(6) that rely on a veteran's place of residence, and so that VA can continue to recover or collect reasonable charges for care and services furnished in the community for a non-service connected disability from a health plan contract, consistent with section 1703(j). We further note that veterans are required to submit information regarding other health insurance under section 1705A. Related to this comment concerning the provision of information by the covered veteran, one comment asserted that VA should make VCCP use conditional on the covered veteran's acceptance of an automatic release of their medical information to non-VA providers. The commenter asserted that this was necessary because it was inefficient to require veterans to authorize individual releases of their medical information, or to rely on non-VA providers to attest that records were received. We do not make changes based on this comment. VA currently has the authority to release veteran medical information for treatment purposes without the written consent or authorization of the veteran under applicable statutes and their implementing regulations (see 38 U.S.C. 7332(b)(2)(H)). Therefore, there is no need to require veterans to authorize individual releases of their medical information if a veteran is receiving treatment using VCCP.

Section 17.4010(d) as proposed established that eligibility determinations for covered veterans to receive hospital care, medical services, or extended care services through the VCCP would be subject to VA's clinical appeals process, and not be appealable to the Board of Veterans Appeals. We received some comments that suggested these eligibility decisions should be appealable to the Board. We make no changes based on these comments, as section 1703(f) expressly provides that these eligibility decisions be subject to VA's clinical appeals process and not be appealable to the Board of Veterans' Appeals. Other comments did not request revisions to § 17.4010(d) per se, but did suggest that VA's appeals process should be comprehensive, and more specifically that VA should develop a unique process within its clinical appeals process, to ensure that individuals adjudicating the VCCP eligibility determinations are not the same VA facility or VISN staff that made the initial eligibility determinations. We clarify that VA's current clinical appeals process can be found in VHA Directive 1041, Appeal of VHA Clinical Decisions, which can be found on VA's website and provides for a comprehensive process of appealing clinical decisions that includes elevating disputes beyond initial staff-level determinations.

Lastly, one comment raised several concerns about different provisions discussed in the proposed rule that potentially related to eligibility, based on several assertions: First, the comment asserted that VA's proposed rule would limit eligibility for VA community care to only certain service-connected veterans, or veterans with only certain discharges from active service; second, the comment asserted that the rule would limit eligibility for care for a recently discharged veteran to 12 months; and third, the comment asserted that veterans should be treated for service connected disabilities regardless of their character of discharge. All of the provisions cited in this comment refer to other provisions of law unaffected by VA's rule, namely § 17.46 (concerning the first issue identified above), which we are making no longer effective; section 1705(c)(2), which authorizes VA to furnish care notwithstanding a veteran's failure to enroll (concerning the second issue identified above); and section 5303(a), which statutorily limits VA's ability to furnish benefits to certain persons. Because these authorities are either being made ineffective through this rule (in the case of § 17.46) or are statutes that were unaffected by this rule (in the case of section 1705(c)(2) and section 5303(a)), we do not make changes based on this comment.

**§ 17.4015, Designated VA Medical Service Lines**

We received over 25 comments concerning the process by which VA would designate those VA medical service lines that were not able to furnish care or services in a manner that complied with VA's standards for quality, so that covered veterans who would receive care or services through such VA medical service lines would be eligible for the VCCP. We address these comments below in the order in which they raise issues related to the provisions in paragraphs (a)–(e) of § 17.4015 as proposed.

As a general matter, one comment suggested that any proposal to eliminate entire service lines at VA facilities should not be implemented. We clarify that no provision in the proposed rule sought to eliminate VA medical service lines at VA facilities. Section 17.4015 as proposed sought to establish criteria by which VA would assess VA medical service lines within its facilities to determine if they were underperforming. If such medical service lines were so identified, then § 17.4010(a)(6) as proposed would allow covered veterans to elect to receive the care or services they would have received under those underperforming VA medical service lines through the VCCP. We do not make any changes to the proposed rule based on this comment. We note that section 1706A, as added by section 109 of the MISSION Act, expressly requires remediation of any VA medical service lines identified under this criterion, and as we discussed near the conclusion of the preamble to the proposed rule, VA's remediation efforts will not be limited to just those medical service lines designated under § 17.4015. These remediation efforts are intended to bolster and support VA's medical service lines.

We received multiple comments related to § 17.4015(a) as proposed, concerning VA's basic parameters for identifying its underperforming medical service lines. First and most generally, one comment requested that VA revise paragraph (a) to make this provision mandatory by using the word ''shall'' instead of ''may''; in the alternative, the commenter suggested that VA must otherwise clarify if it interprets the quality monitoring mandates imposed by section 1703(e) and 1703C to be optional. We do not make changes based on this comment and clarify that not all provisions in the MISSION Act require VA to take action. VA used the term ''may'' in § 17.4015(a) as proposed because VA is not required, and may be practically unable, to identify any VA medical service line as underperforming, and consequently, it may be the case that no covered veterans qualify for community care under this criterion. We also, as noted above, allow the Secretary to place conditions or limitations on the ability of covered veterans to elect to receive care under this criterion.

One comment requested that VA revise § 17.4015(a) to provide for a comparison of timeliness between VA and non-VA medical service lines, as this comparison of timeliness is not expressly prevented by section 1703 or 1703C. We do not make changes based on this comment, as the comparison of timeliness between only VA medical services lines is consistent with section 1703(e)(1)(B)(i). We further note,

however, that § 17.4015(a) identifies timely care as the first domain of care, and hence the timeliness of care with non-VA service lines would be considered indirectly.

We received multiple comments related to VA's standards for quality themselves, a majority of which we interpret as beyond the scope of the proposed rule because such standards are to be established and announced via a separate process in the **Federal Register**, as stated in the proposed rule. However, we summarize those comments here as they could be interpreted to apply to § 17.4015(a) as proposed, and that paragraph's express statements of using VA's standards for quality to determine when VA medical service line are underperforming. Multiple comments argued that VA should not use VA's standards for quality, but rather should use existing industry standards related to quality monitoring (such as the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set, or Centers for Medicare and Medicaid Services Merit-Based Incentive Payment System), versus developing VA-based quality measures as indicated in § 17.4015(a) as proposed. One comment more specifically requested that VA revise § 17.4015(a) accordingly to reflect that VA will use industry standards for quality. Conversely, other comments suggested that there seemed to be a deficiency of reliable data available to VA that is related to quality measures or metrics concerning non-VA providers; one comment further stated that until non-VA providers are able to produce comparative data to be used in assessing VA medical service lines, VA should only use its data to identify and remediate its medical service lines. Other comments more specifically recommended that VA use its existing tools such as VA's Strategic Analytics for Improvement and Learning tool to identify its underperforming service lines. Some of these comments further stated that VA should consider unique veteran populations when developing standards, with one comment requesting that VA require vascular surgery quality outcomes to be assessed to ensure non-VA outcomes match VA outcomes. Other comments did not suggest a particular approach regarding the use of VA or non-VA quality measures, but rather requested clarification of what quality measures or metrics VA would use. We do not make changes to § 17.4015(a) based on these comments, but we reiterate from the proposed rule that VA's standards for quality will be announced through a separate document published in the **Federal Register** as set forth in § 17.4015(c) as proposed. We do note that VA's proposed standards for quality, as submitted to Congress in a report earlier this year, focused on the framework for quality identified by the National Academy of Medicine.

We did not receive any comments on § 17.4015(b) as proposed and are not making any changes from the language we proposed.

We received a few comments related to VA providing notice of its standards for quality once established, as well as comments on other provisions set forth in § 17.4015(c) as proposed. At the outset, we note that multiple comments urged VA to publicly release VA's report detailing its standards for quality that was submitted to Congress on March 4, 2019. We do not make changes to § 17.4015(c) based on this comment, as we believe § 17.4015(c) makes adequate provision for public notice of the standards of quality.

Section 17.4015(c) as proposed contained language to establish potential limitations of when and where covered veterans could receive qualifying non-VA care and services at their election based on VA's identification of its underperforming medical service lines. These possible limitations on receiving qualifying non-VA care included a limitation by defined geographic area. We received one comment that stated this language implied that VA will interpret its standards for quality based on a regional geographic standard versus a national standard and asked that VA clarify whether this is the case. We clarify that while VA will have national standards for quality, VA's quality comparisons will generally be based on care that is locally available and not on national averages. It would be of little use to patients in a particular area or region to have VA care that is locally available to them compared to care that is not locally available. The language in § 17.4015(c) related to limitations (including the limitation based on geographic area) therefore serves to alert covered veterans that the qualifying non-VA care they may elect to receive may be limited in its location, in the type of care that may be received, etc., as it would be offered as an option to the specific care that would be designated in the specific VA medical service line that VA would have identified as underperforming. We do not make changes based on this comment.

A few comments requested clarification of whether direct notice to covered veterans of underperforming VA medical service lines, as set forth in § 17.4015(c) as proposed, would include other than electronic communication (to include notification by mail, phone, etc., as well as a **Federal Register** document). A related comment requested that VA ensure non-VA providers are provided the direct notice VA would conduct when making determinations under § 17.4015(c) on VA medical service lines. We do not make changes based on these comments. We reiterate from the proposed rule that VA will take reasonable steps to provide direct notice to covered veterans affected under this section to include written correspondence, electronic messages, or direct contact (in person or by phone). We do not believe it necessary to regulate VA's notice to community providers.

A few comments requested that VA revise § 17.4015(d) as proposed to permit VA to identify more than three underperforming VA medical service lines and more than 36 underperforming VA medical service lines nationally. One comment stated that there should be no limit on the number of designated VA medical service lines per facility or the total number nationally that could be designated as underperforming, and one comment urged VA to seek a legislative fix to allow VA to designate more than 36 VA medical service lines nationally. We do not make changes based on these comments, as VA is limited by statute to designating no more than three service lines per facility and 36 service lines nationally, in accordance with section 1703(e)(1)(C). As the comment indicates, any resolution to allow more than the permitted number of VA medical service lines to be designated would require Congressional action and therefore is beyond the scope of the proposed rule.

Multiple comments raised issues related to the factors VA would consider when determining whether its medical services lines would be identified as underperforming, as set forth in § 17.4015(e) as proposed. One comment noted that VA should limit comparison of underperforming VA medical service lines against only similarly underperforming non-VA medical service lines (and further, only those non-VA underperforming medical service lines that are accessible to covered veterans), to ensure that a covered veteran would not have the option to choose to receive lower quality care from a non-VA medical service line than a VA medical service line. Another comment asserted that VA must consider whether non-VA medical

service lines would be able to provide the same type of care or better care before designating a VA medical service line as underperforming. We interpret these comments to be related to § 17.4015(e)(1) as proposed, as the general paragraph that would establish whether differences in performance between VA and non-VA medical service lines were clinically significant. We do not make any changes to § 17.4015(e)(1) based on these comments. The language in § 17.4015(e)(1) provides that VA will compare performance of its medical service lines against the performance of non-VA medical service lines to identify VA deficiencies. By the time VA is determining whether the differences in performance are clinically significant, it will have already assessed the quality of VA's medical service and non-VA medical service lines and identified that there is in fact a difference. We also reiterate from the proposed rule that the language related to clinical significance in § 17.4015(e)(1) would allow VA to appropriately discern differences in performance between VA and non-VA medical service lines to determine if VA medical service lines were underperforming. Determinations regarding performance will be made locally and should generally result in veterans being able to access better quality care in the community than they would receive from service lines designated as underperforming.

We received a few comments related to the factor in § 17.4015(e)(2) as proposed, that VA would consider the likelihood and ease of remediation of the medical service line within a short timeframe when determining whether it was underperforming. We reiterate from the proposed rule that the intent of this factor is to allow VA to designate as underperforming those medical service lines in need of the kind of intensive remediation envisioned by section 1706A, and not necessarily those medical services lines where a simple action (such as the purchase of new equipment) is likely to occur and would be sufficient to remediate underperformance. One comment requested that VA revise this factor in § 17.4015(e)(2) to permit a temporary designation of a VA medical service lines that may only require simple actions likely to occur in a short timeframe, to prevent scenarios in which veterans would receive what the comment asserted would be substandard care even if on a temporary basis. We do not make changes based on this comment. We do not agree with the comment's equating of potential temporary underperformance of a VA medical service line with delivery of substandard care. Further, we reiterate from the proposed rule that § 17.4015(e)(2) is necessary to allow VA to be selective in engaging in remediation that will require allocation of VA resources. We further note that, in such temporary situations, covered veterans might still be eligible to receive care in the community under the best medical interest criterion in § 17.4010(a)(5), which may provide more nimble and timely access to care than the designation of a VA medical service line under § 17.4015. A related comment requested clarification of the effect of the factor in § 17.4015(e)(2), more specifically whether VA intended this factor to be used to identify only those medical service lines that could be remediated easily. We clarify that this is not the intent of § 17.4015(e)(2); to the contrary, we reiterate from above that this factor should allow VA to designate as underperforming those VA medical service lines in need of the kind of intensive remediation envisioned by section 1706A, and not necessarily those services lines where a simple action is likely to occur and would be sufficient to remediate underperformance. As other commenters noted, VA is limited to the number of VA medical service lines it can designate nationally and at any particular facility. It would be a poor use of this authority to waste one of those limited opportunities to designate a VA medical service line that could be improved easily and quickly.

We received one comment that requested VA provide more information on why data that may be required to assess the performance of VA and non-VA medical service lines could take as long as 18–24 months to collect or analyze, particularly if such data may already be collected by VA related to the performance of its medical service lines. The comment further urged VA to take steps to shorten this timeframe, to prevent scenarios where a covered veteran may receive what the commenter deemed sub-standard care for an extended time while VA determines whether its medical service lines are underperforming. We believe this comment is referring to the portion of the proposed rule that explained § 17.4013(e)(3), which is the factor that would permit VA to consider recent trends concerning a VA or non-VA medical service line when determining if a VA medical service line is underperforming. The preamble of the proposed rule provided that the process to gather, analyze, and verify quality data could take as long as 18–24 months, and for this reason VA needed a factor that would permit it to consider more contemporaneous information to determine whether one of its medical service lines was underperforming. These data are inherently time-lagged, as much of the data we use is collected and reported by other entities (such as Medicare). Moreover, it may take months to collect enough data to support valid conclusions; small sample sizes are inherently unreliable, and if a particular VA medical service line simply does not furnish care to that many patients, it could take some time to generate enough cases to produce reliable results that would be actionable. We again reiterate, though, that covered veterans could still access care in the community under any of the five other eligibility criteria in § 17.4010, including the best medical interest criterion under § 17.4010(a)(5). We believe that § 17.4015(e)(3) as proposed actually resolves the concern in the comment, because it expressly allows VA to consider contemporaneous information, and we make no changes based on this comment.

We received one comment that urged VA to remove the designation factor in § 17.4015(e)(6) as proposed, related to considering the effect that designating a VA medical service lines would have on other VA medical service lines. The comment characterized this factor as a loophole that would allow underperforming VA medical service lines to avoid designation, due to the negative effects such designation would have on other medical services lines. We disagree with the comment's characterization of this factor. We do, however, maintain that this factor is critical to allow VA to be selective in its designations, particularly for medical service lines whose designation may be more vastly disruptive, both to other VA medical service lines and other programs, than we believe is the intent of identifying any underperforming VA medical service lines under section 1703(e) generally. We do not make changes based on this comment.

We received a few comments that did not seem clearly related to any of the factors in § 17.4015(e)(1)–(6) as proposed, but that suggested clarifications or potential changes to § 17.4015(e) based on particular services or particular veteran populations. One comment requested that VA clarify to what extent extended care services could be an underperforming medical service line, and another comment urged VA to consider the unique needs of women veterans in designating VA medical service lines as

underperforming. We do not make changes to § 17.4015(e) based on these comments but do clarify that the rule does not place any limitations on what type of VA medical service lines may be designated, so such VA medical service lines could be those that provide extended care services (*e.g.,* geriatrics) if VA finds them to be underperforming. Additionally, we believe that § 17.4015(e) as proposed gives VA the latitude to consider all veteran populations, including women veterans, and we agree that VA should consider the unique needs of veteran populations when determining whether its medical service lines are underperforming.

Lastly, we received a few comments that urged VA to develop and make public a dataset that compares providers, facilities, and practices based on VA's standards for quality, to provide covered veterans with additional information they may use when determining whether to elect to receive care in the community. We do not make any changes based on these comments but note that we address VA's communication of comparative information to inform health care decisions in the portion of this final rule that discusses miscellaneous comments.

**§ 17.4020, Authorized Non-VA Care**

We received over 100 comments concerning the process and requirements for authorizing non-VA care under the VCCP. We address these comments below in the order in which they raise issues related to the provisions in paragraphs (a)–(d) of § 17.4020 as proposed (including VA's supplemental notice of proposed rulemaking related to transplant care). We note that some of these comments did not suggest changes to the regulation text in § 17.4020 as proposed, and further raised issues that were related more to administrative process rather than the regulatory requirements under which VA will authorize care. We will address below only those issues raised in comments regarding VA's requirements and authorities to authorize non-VA care as proposed and will address other issues related to administrative process in another section of this final rule related to miscellaneous comments.

We did not receive comments to revise a covered veteran's election to receive care under the VCCP should they be so eligible, under § 17.4020(a) as proposed. We do reiterate, however, in response to many comments that expressed concerns related to the effects of expanding non-VA care on VA's direct provision of care, that § 17.4010(a) requires a veteran's election to receive non-VA care under the VCCP; VA does not force covered veterans to receive non-VA care.

Several comments did request clarification or revision of VA's authorization of care and services to be furnished through the VCCP if the covered veteran elects to receive such care, under § 17.4020(a) as proposed. Some of these comments broadly opposed VA's specific authorization of care and services, for instance, those comments that asserted that a veteran's VA identification card should be all that is required to present to obtain care without further review or authorization requirements. Other comments were more specific, for instance, that VA should reduce or eliminate the requirement for VA authorization of care or services from approved non-VA providers who have a record of effective and efficient care within the Veterans Choice program. Still other comments further advocated that VA should eliminate the requirements for additional authorizations that may be required within an episode of care (referred to as secondary authorizations) because they were concerned that these authorizations could unduly delay the provision of care or services, such as additional testing that may be found to be required. One comment more specifically requested that any authorization of an episode of care that includes a surgical procedure should automatically cover any other care furnished during that procedure, and a related comment even more specifically requested that VA should require that follow up care for vascular surgical procedures (particularly imaging) be provided by the same non-VA vascular surgeon who provided the initial care or services to the covered veteran. We do not make changes based on these comments.

We reiterate from the proposed rule that, in accordance with section 1703(a)(3), VA is required to authorize care or services that a covered veteran might elect to receive through the VCCP. This authorization of care and services covers an episode of care that may last up to one year, but only for care and services that are within the scope of the care or services initially authorized. VA has developed a process to facilitate access to necessary and ancillary services within an episode of care; we refer to these authorizations as standard episodes of care (SEOC). VA uses SEOCs to bundle services that are necessary and related so that referrals between different specialists are more easily facilitated and so that all specialty and ancillary services are included within the episode of care. For example, a veteran in need of knee replacement surgery would be authorized through a SEOC for pre- and post-operative examinations, the surgery itself, and physical therapy. The same would follow for a veteran in need of vascular surgery, as raised by the comment described above, for all specialty care and ancillary services that would reasonably be expected to be medically necessary after the surgery itself. However, the regulation will not prescribe at so granular a level, for instance, automatic approvals for particular follow-up care or for care to be provided by the same providers that initially performed surgical procedures. Requests for authorization of services outside the SEOC further allow VA to assess the need for care or services recommended by a non-VA provider, and whether these services fall within the approved episode of care or whether they constitute a new episode of care.

Several comments asserted that a covered veteran's selection of a provider in § 17.4020(b) as proposed did not actually ensure that a covered veteran could see his or her provider of choice. The primary reasons offered for why providers of choice were not available were that delays in VA's payment of claims, or other complications associated with VA's administration of its community care programs, created too many disincentives for non-VA providers to participate in such programs. We will address these comments, as well as other comments regarding VA's administration of its community care programs, in another section of this final rulemaking related to miscellaneous comments. However, we do note that even setting aside these operational concerns, VA cannot compel a private provider to furnish care and services to a covered veteran. If the covered veteran identifies a particular entity or provider as his or her preferred source of care, and if that provider or entity is within VA's network and accessible to the covered veteran, we would refer the veteran to that entity or provider. If the identified provider is not part of VA's network and does not wish to become part of VA's network (and VA cannot otherwise secure the care through a sharing agreement, other arrangement, or Veterans Care Agreement), VA cannot compel that provider to treat the covered veteran. We do not make any changes to § 17.4020(b) as proposed based on these comments.

A majority of the comments VA received related to § 17.4020 as proposed raised issues related to emergency care that may be authorized by VA as set forth in § 17.4020(c) as

proposed. We reiterate that we will address below only those issues raised in comments regarding VA's requirements and authorities to authorize emergency care as set forth in § 17.4020(c), and we will address issues related more to administrative process of VA approving emergency care in another section of this final rule related to miscellaneous comments.

We received a few comments that requested VA clarify any potential intersection or sharing of assessment criteria or other standards between emergency care furnished under the VCCP and emergency care separately furnished under 38 U.S.C. 1725 and 1728. We interpret these comments to be related to § 17.4020(c) as proposed, as paragraph (c) established that it did not affect eligibility for, or create any new rules or conditions affecting, reimbursement for emergency treatment under sections 1725 or 1728. These comments ranged in their primary concerns for identifying the relationships between emergency care offered under different VA authorities. For instance, one comment wanted clarification of the reasonableness standard that would be applied under the VCCP to determine whether care or services were emergent in nature, and further advocated that the prudent layperson standard should be applied (specifically, to include post-stabilization). Another comment requested clarification of the relationship between the varying emergency care authorities to ensure that covered veterans would understand when VA will likely authorize emergency care and reimburse for such care, versus the veteran possibly being liable. We do not make changes based on these comments.

We believe that § 17.4020(c) is sufficient to indicate that emergency care furnished through the VCCP is distinct from and does not affect emergency care provided under sections 1725 or 1728. We do clarify, however, that because paragraph (c)(1) of § 17.4020 does reference section 1725(f)(1) to define emergency treatment, VA will use the prudent layperson standard as interpreted through section 1725. We understand this clarification that VA will use its section 1725 prudent layperson for emergency treatment furnished through the VCCP is not what was requested by the comment, which asserted that this very standard permitted VA to review decisions of reasonableness instead of VA using what would perhaps be considered a broader industry standard (for instance, as referenced by the comment to a Centers for Medicare and Medicaid Services standard of prudent layperson in 42 U.S.C. 300gg–19a(b)(2)(A)). However, we believe VA's prudent layperson standard is reasonable to administer the furnishing of emergency treatment through the VCCP. This same comment also requested that VA revise § 17.38(a)(1)(iv) to expressly provide that emergency care under VCCP is part of the medical benefits package. We agree and are revising § 17.38(a)(1)(iv) accordingly. We believe this change will assist individuals in understanding that emergency care provided under the VCCP is separate from that provided under sections 1725 and 1728 and is a covered benefit under the VCCP.

We received a comment that requested VA clarify that the term emergency treatment includes mental health care, which we interpret to be related to § 17.4020(c)(1) as proposed as this paragraph referenced the definition of emergency treatment in 38 U.S.C. 1725(f)(1). We do not make changes based on this comment, as we believe the reference to the definition of emergency treatment in section 1725(f)(1) is sufficient to indicate that mental health services are considered within the scope of emergency treatment. Section 1725(f)(1) refers to medical care or services furnished in an emergency. We have interpreted this to apply to any care or services within VA's medical benefits package, which includes mental health services, as identified in § 17.38(a)(1)–(2).

Comments generally stated that the 72-hour rule in § 17.4020(c)(2) as proposed was not reasonable. Primarily, these comments asserted that the 72-hour timeframe was too short or did not provide exceptions where it may be exceeded. There were multiple reasons provided in the comments to support that the 72-hour rule should have exceptions, which we summarize and respond to below. We note that some of these reasons raise issues related to requirements in § 17.4020(c)(3) and (4) as proposed, related to requirements for approval and notice to VA, respectively.

One comment stated that § 17.4020(c) as proposed did not reflect what the comment asserted was the current regulatory option for an exception to the 72-hour rule, to provide VA notice within a reasonable amount of time after the emergency care was furnished. We note that no such exception exists in current regulation under § 17.54, and we see no reason to add such an exception here, as this rule would only apply to covered veterans and eligible entities or providers.

Other comments offered reasons to establish exceptions to the 72-hour rule that were related to veterans or non-VA providers not understanding what VA facility should receive the notice or who to contact at such VA facility. Some of these comments more specifically noted that neither the appropriate VA official nor the nearest VA facility in § 17.4020(c)(4)(i) as proposed were clearly defined or characterized, particularly in instances where a veteran might be traveling and not be familiar with VA facility locations, or non-VA providers may not be familiar with VA facilities in their area. Some of these comments further requested clarification of who is considered an appropriate VA official, or requested that VA revise the requirement to allow notice to be delivered to any VA facility. As we explained in the proposed rule, only eligible entities or providers who have a contract or agreement to furnish care on VA's behalf may furnish care under § 17.4020(c). While veterans who are traveling may not know the local VA facility, we are confident that each community entity or provider in our network will know the right VA facility to contact.

Other comments offered reasons to establish exceptions to the 72-hour rule that were related to the nature of receiving emergency care or services. For instance, these comments asserted that in many cases a covered veteran seeking emergency care will be in a compromised medical state, and therefore should not be expected to understand whether they are seeking care from authorized entities or providers, or to understand whether all care offered might be covered by the medical benefits package.

Still other comments argued that exceptions are needed due to other circumstances, such as when the nearest VA facility might be closed after business hours or on holidays (to create delays in meeting the 72-hour rule), or when 72 hours may simply not be enough time for a non-VA provider to have obtained all information required under § 17.4020(c)(4) (for instance, if a covered veteran presents for emergency treatment without identification). One of these comments further requested that VA revise the rule so that the 72-hour period would not begin until the later of when the entity or provider began furnishing the care or the time when a reasonably diligent non-VA entity or provider would have the information necessary to submit a notice to VA in compliance with § 17.4020(c)(4).

We do not make any changes based on these comments to create exceptions to the 72-hour rule in § 17.4020(c)(2) as proposed. We reiterate from the

proposed rule that the 72-hour requirement is consistent with the window for approval under existing § 17.54(a), and we believe the 72-hour requirement continues to be a reasonable timeframe to allow notification upon stabilization of the patient or upon the next business day in the overwhelming majority of cases. VA will work to improve its communication materials for both veterans and eligible entities and providers concerning who may receive the notice and at what VA facility, without making changes to § 17.4020(c)(2) through (4). We believe this improved communication will assist with effective and timely provisions of notice within the 72-hour requirement. We also clarify that if the 72-hour window is not met, VA will consider any claims for reimbursement of the costs of the emergency treatment under other authorities, specifically sections 1725 and 1728, which authorize reimbursement of certain non-VA emergency treatment; there is no 72-hour requirement under either of these other authorities, but we do request notification under these authorities as soon as possible in the interest of coordination of care. We note that a veteran's personal financial liability, if any, could vary depending upon whether the care is authorized under section 1703 under the 72-hour rule or reimbursed under sections 1725 or 1728.

One comment requested that VA clarify if it will define someone acting on the covered veteran's behalf in § 17.4020(c)(2), or if VA will provide an exception to automatically approve care if a covered veteran is incapacitated (or, conversely, if VA will apply what the comment asserted was the current VA emergency room standard to non-VA emergency rooms). We do not make any changes based on this comment, as we believe the issues raised may be conflating the concept of a covered veteran's consent to receive emergency treatment with VA's approval of such treatment furnished through the VCCP.

One comment requested that VA revise § 17.4020(c) to permit that two emergency room visits be permitted through the VCCP at no charge to covered veterans. We interpreted this comment to be raising issues more related to VA's administration of its approval of emergency treatment, because it relayed concerns that covered veterans were unduly subject to cost liabilities for emergency treatment that the comment asserted VA failed to approve or pay timely. We will therefore address this comment in the section of this final rule that pertains to miscellaneous comments, although we do clarify here that § 17.4020(c) as proposed does not limit the number of visits to an emergency room for a covered veteran to receive emergency treatment through the VCCP.

Lastly, one commenter asserted that VA should add urgent care in addition to emergency treatment as available care and services under the VCCP. We do not make changes based on this comment but do clarify that VA is promulgating separate regulations, published elsewhere in this issue of the **Federal Register**, to furnish urgent care through non-VA providers (see RIN 2900–AQ47, published as a proposed rule on January 31, 2019 (84 FR 627)).

On April 5, 2019, VA published a Supplemental Notice of Proposed Rulemaking (SNPRM) to amend VA's proposed rule by proposing a minor revision to paragraph (a) and a new paragraph (d) to account for section 1703(l) and its language concerning organ and bone marrow transplants. 84 FR 13576. VA received 10 comments on this SNPRM. One comment was a request for case management assistance, which VA has addressed but which was beyond the scope of the rulemaking. We make no changes based on this comment. Four comments supported the changes proposed by the SNPRM. We make no changes based on these comments. One comment raised concerns regarding billing and payments for community providers. The commenter stated that clear definitions of how payments will be processed and paid between VA and the community providers is important to minimize any confusion in the billing process. The SNPRM did not address claims or billing issues because these were separately addressed in § 17.4035 of the proposed rule. We received comment on the proposed rule regarding billing and claims payment, which we address more fully below. In brief, however, we do not regulate VA's process for claims submissions or billing at this time. VA contracts and agreements will establish these requirements between the parties, and rules of general applicability, particularly regarding prompt payment, will be regulated at a later time. We make no changes based on this comment.

One commenter requested that VA provide examples of medically compelling reason for a veteran to seek transplant services outside of the Organ Procurement and Transplantation Network (OPTN) region in which the veteran resides. We do not make changes based on this comment but clarify that examples of medically compelling reasons were provided in § 17.4020(d)(2)(i) through (iv) as proposed and were discussed in the SNPRM. This same commenter requested for VA to clarify how OPTN regions and distance considerations in § 17.4020(d)(2)(iii) as proposed will interact in determining whether a transplant will be authorized. We do not make changes based on this comment but clarify that § 17.4020(d)(2)(iii) provides that VA will consider travel burden on covered veterans when deciding to authorize transplantation care at a transplant center outside the Veteran's OPTN region of residence. Geographical proximity of a qualified transplant center in an OPTN region adjacent to the patient's residence will be considered when burden of travel is meaningfully impacted. Availability of services in consideration for authorization of care in another OPTN region is cited in § 17.4020(d)(2)(iv) as timeliness of transplant center evaluations and management. Transplant program qualifications are further addressed by § 17.4020(d)(2)(i) and (ii). Transplant programs must meet standards for quality, and specific patient factors may include a disease process or transplantation procedure that warrants referral to selected transplantation centers, including those in a different OPTN region.

One commenter suggested that VA permit Veterans to be listed on more than one OPTN regional list if indicated, to increase their chance of being matched. We do not make changes based on this comment but clarify that the listing of Veterans on more than one OPTN regional list is not prohibited by the regulation. Related policy will specify that such listing is an appropriate consideration for authorization of care in an OPTN region other than that of the Veteran's residence.

One commenter asserted that the SNPRM failed to clarify the differences between solid organ transplant and bone marrow transplant. This commenter more specifically noted that bone marrow transplant falls outside of the scope of OPTNs, and that the proposed rule only indicated how VA Transplant Programs and VA Transplant Centers interact with OPTNs; hence, the commenter indicated that VA should clarify whether the rule captures bone marrow transplants. We do not make any changes based on this comment, as the MISSION Act includes provisions for both bone marrow transplantation and solid organ transplantation. VA understands that OPTN does not oversee bone marrow transplantation, but the rule does cover bone marrow transplants. This same commenter further suggested that the four factors in

§ 17.4020(d)(2) to be considered when determining a medically compelling reason to travel outside of the OPTN must be revised to include relevant details for bone marrow transplant. For instance, the commenter noted that the factor related to assessing facilities outside of an OPTN to determine whether they meet VA's standards for quality in § 17.4020(d)(2)(ii) as proposed was only explained in the preamble of the SNPRM in reference to Scientific Registry of Transplantation Recipients data, which is only applicable to solid organ. We do not make changes based on this further comment. VA understands that relevant patient factors may vary based upon the specific transplant both among solid organ types and bone marrow transplant, which is precisely why the SNPRM noted the four factors in § 17.4020(d)(2)(i)–(iv) were a non-exhaustive list. The Scientific Registry of Transplantation Recipients database is provided only as an example. Additional standards for solid organ transplantation programs and separate standards for bone marrow transplantation programs will be developed during policy and procurement processes.

We received one comment that requested that VA clarify that it is the veteran's choice whether to obtain a VA or non-VA transplant within the Veteran's OPTN (the commenter essentially asserted that the SNPRM was unclear that the veteran first has a choice of a non-VA transplant center within the OPTN prior to any consideration of travel outside of an OPTN). We do not make changes based on this comment. A covered veteran who is determined by VA to meet eligibility criteria for community care in proposed § 17.4010 has the ability to decide whether to receive transplantation care in the community within the OPTN region of residence. Veterans who meet eligibility criteria for community care may elect to receive care at a VA Transplant Center. This commenter also asserted that section 1703(l) requires only that a veteran be a covered veteran to be considered eligible for this expanded access to transplant care and does not require such a covered veteran to be separately assessed under any other criteria (*e.g.,* the criteria to receive community care generally under section 1703(d) or (e)). We believe this portion of the comment was prompted by VA's clarification in the SNPRM that this expanded access to transplant care only applies for a covered veteran (as defined in § 17.4005) who meets one or more of the eligibility criteria for community care generally under § 17.4010. We do not make changes based on this comment. We read section 1703(l) as qualifying the conditions of eligibility set forth in section 1703(d) and (e); there is nothing in section 1703(l) that suggests it is intended to establish an additional, independent basis of eligibility for community care. Moreover, the expanded access to transplant care under section 1703(l) is available only if there is a medically compelling reason to travel to receive such care. VA cannot envision any instance in which a covered veteran would be found to have a medically compelling reason to justify travel outside of an OPTN, but not be found to qualify separately for community care generally under § 17.4010(a), particularly considering that the factors to determine a medical compelling reason under § 17.4020(d)(2)(i)–(iv) are related to many of the eligibility factors in § 17.4010 (for instance, factors exist under §§ 17.4010(a) and 17.4020(d) that relate to the specific medical needs of a veteran, the travel burden for a veteran, and the timeliness of care to be received). This commenter further asserted that VA should ensure a veteran's primary care physician receives deference over the Secretary in the determination of whether a veteran is eligible to travel outside of the OPTN. We do not make changes based on this comment. Section 1703(l) requires that the Secretary make the determination of whether to authorize community care for covered veterans requiring an organ or bone marrow transplant and who have a medically compelling reason to travel outside of the OPTN region in which they reside to receive the transplant. The Secretary's determination is only made when the primary care provider has opined that there is a medically compelling reason to travel outside the OPTN region in which the veteran resides to receive such transplant; this opinion is a threshold question of when the Secretary makes a determination, and not a final resolution of the matter. Lastly, this commenter urged that VA should include in the final rule a specific timeframe within which VA is required to make a decision on requests to travel outside OPTN for non-VA transplant, as well as a means for expedited decision or waiver of such a decision. We do not make changes based on this comment. Timeframes may be influenced by factors such as the type of transplant, patient disease process, and patient acuity. It would not be practicable to define specific timeframes by regulation, given the variability of these factors. However, VA will develop policy that will address such timeframes.

**§ 17.4025, Effect on Other Provisions**

We received over 50 comments concerning the effects of §§ 17.4000 through 17.4040 as proposed upon provisions of VA law that establish other criteria for the receipt of care or services. We address these comments below in the order in which they raised issues related to the provisions in paragraphs (a)–(c) of § 17.4025 as proposed.

We did not receive any comments that requested revisions to or clarifications for § 17.4025(a) as proposed, although as a general matter we did receive some comments that seemed to call for expanding eligibility for certain care and services under the VCCP beyond that which is established in other specifically applicable provisions of VA law (for instance, multiple comments called for the expansion of eligibility for VA dental care). Other comments did not seek expanded eligibility for certain care or services under the VCCP but did assert that the rule as proposed did not provide adequate explanation of eligibility for certain benefits such as dental care. We do not make any changes based on these comments and reiterate from the proposed rule that consistent with section 1703(n)(2), no provision in the rule may be construed to alter or modify any other provision of law establishing specific eligibility criteria for hospital care, medical services, or extended care services (such as for dental care). If specific services such as dental care under §§ 17.160–17.169 have unique eligibility standards, only covered veterans who are eligible under proposed § 17.4010 and meet such eligibility standards can elect to receive them through the VCCP.

A majority of the comments we received on § 17.4025 as proposed related to § 17.4025(b), regarding VA's criteria under the VCCP to fill or pay for prescriptions issued by non-VA providers. Some of these comments did not suggest changes to or clarification of the regulation text in § 17.4025(b) as proposed, but rather seemed to present issues related to administrative process rather than regulatory requirements (primarily, VA's administrative practices in reviewing prescriptions issued by non-VA providers). We will address below only those issues raised in comments regarding VA's requirements in § 17.4025(b) as proposed, and will address other issues related to administrative process in another section of this final rule related to miscellaneous comments.

As proposed, § 17.4025(b)(1) established the rule that VA would pay for prescriptions written by eligible entities and providers for a course of treatment not to exceed 14 days, and paragraph (b)(2) established that VA would fill prescriptions written by eligible entities and providers without any accompanying 14-day limitation. As explained in the preamble of the proposed rule, the intent of § 17.4025(b)(1) and (2) was to establish in VA regulations the long-standing VA practice of limiting its payment for medications written by non-VA providers and filled through non-VA pharmacies, rather than limiting VA's direct filling of such prescriptions through VA's Consolidated Mail Order Pharmacy (CMOP) system. We first address a comment that revealed an inadvertent omission in the regulation text at § 17.4025(b)(1) as proposed, related to when VA will pay for non-VA prescriptions. This comment specifically urged VA to change its practice of requiring veterans to pay for urgent or emergent prescriptions filled outside of VA's CMOP and then seek reimbursement from VA. This comment correctly summarized VA's practice at the time the proposed rule published, although § 17.4025(b)(1) as proposed did not contain any qualifying language related to VA paying for prescriptions written by non-VA providers only when they were urgently or emergently needed. We therefore revise § 17.4025(b)(1) to include qualifying language that VA will pay for prescriptions no longer than 14 days written by eligible entities or providers for covered veterans, including over-the-counter drugs and medical and surgical supplies, available under the VA national formulary system to cover a course of treatment for an urgent or emergent condition. In response to the request in this same comment that VA correct its practice of reimbursing veterans, to instead pay directly for prescriptions urgently or emergently needed for a course of treatment not to exceed 14 days, we clarify that VA's use of the term ''pay'' versus ''reimburse'' in § 17.4025(b)(1) was intended to and does create the option for VA to pay directly for these prescriptions. VA expects that upon full implementation of the Community Care Network of eligible entities and providers, the pharmacy benefits management options under those contracts will provide for VA to pay non-VA pharmacies directly for prescriptions written by eligible entities and providers to cover a course of treatment for an urgent or emergent condition and not to exceed 14 days.

We received multiple comments that indicated a general dissatisfaction with VA's practice of limiting payment for prescriptions written by non-VA providers, as well as comments that more specifically asserted that the 14-day limitation in § 17.4025(b)(1) as proposed was unreasonable because VA did not establish any exceptions to this limitation, with one comment requesting a revision to § 17.4025(b)(1) to allow for payment of a course of treatment greater than 14 days if VA is unable to fill that greater course through its Consolidated Mail Order Pharmacy (CMOP) system. Other comments requested an expansion of the 14-day limitation, such as a broad expansion of the limitation to 30 days, with one comment noting that a 30-day supply of medication should be approved for outpatient surgery specifically (to reduce potential post-surgical injuries or complications). We received other comments that did not suggest revisions or exceptions to the 14-day limitation per se, but that requested clarifications regarding its application. For instance, one comment requested clarification of VA's practices in paying for medications that are prepackaged for durations exceeding 14 days and that cannot be divided. We do not make any changes based on these comments that expressed general dissatisfaction with the 14-day limitation, or comments that VA should establish exceptions to or expand the 14-day limitation. As explained above, VA's only pays for non-VA prescriptions that are filled through non-VA pharmacies if they are needed to cover a course of treatment for urgent or emergent conditions. The 14-day limitation is a function of the limitation related to urgent and emergent conditions, as courses of medication for longer periods of time are not typically prescribed to treat urgent or emergent conditions. VA also has a responsibility to monitor the prescription of medications to ensure appropriate prescribing practices and general patient care. Using the outpatient surgery example as provided in one of the comments, typical medications issued following surgery such as antibiotics and pain killers are particularly important for VA to review and fill via the CMOP because such medications create medical concerns (such as antibiotic resistance, potential opiate monitoring issues, or other adverse events) if they were to be issued for and taken longer than 14 days. We also reiterate from the proposed rule that the current practice to limit payment for non-VA prescriptions allows VA to ensure that any amount of medication exceeding 14 days would be filled through VA's CMOP system to ensure cost and quality controls. VA believes that the economies of scale related to bulk purchase of medications allow for the best use of Federal resources.

We received one comment that asserted non-VA providers must verify that prescribed medications are available through VA's formulary and comply with VA's practice guidelines, to avoid scenarios where covered veterans might receive prescriptions VA will not fill. We first note that we do not have anecdotal knowledge that there are widespread or recurring issues that non-VA providers are issuing prescriptions that VA cannot or will not fill because such medications are not on VA's formulary, or because the prescription contradicts VA's practices or guidelines. However, VA will review its administrative practices in reviewing and filling prescriptions issued by non-VA providers, to ensure it develops any necessary education or communication to non-VA providers to prevent those scenarios. We do not make any changes based on this comment but do note that § 17.4025(b)(1) and (2) as proposed generally requires that medications issued by non-VA providers must be available under the VA national formulary system. There are exceptions where VA may fill non-formulary prescriptions issued by non-VA providers, and such requests for exceptions are reviewed under specific procedures in VHA Directive 1108.08, VHA Formulary Management Process, which can be found on VA's website.

We received a few comments related to the prescribing of durable medical equipment (DME) by non-VA providers under § 17.4025(b)(3)–(4) as proposed. Some comments asserted that the rule should not require VA oversight or approval of prescriptions from non-VA providers for durable medical equipment (DME). Other comments were more specific, with one comment requesting clarification of who determines and what standards are used to determine when DME is immediately needed under § 17.4025(b)(3) as proposed, and further asserting that it should be determined by the prescribing clinician. Another comment requested that VA revise § 17.4025(b)(3) as proposed to specify that DME is an immediate need if it is required to safely discharge a patient from an urgent or emergent care setting, and that § 17.4025(b)(3) and (4) should be revised to expressly include home oxygen as covered under DME.

With regard to comments concerning general VA oversight and approval of DME that is prescribed by non-VA

providers, we reiterate from the proposed rule that because DME and medical devices prescribed by non-VA health care providers are specific to a particular clinical need and in most cases are further specifically tailored to fit or serve an individual, they require oversight and approval by VA (except when urgently or emergently needed) to ensure clinical appropriateness and the best use of Federal resources. We therefore do not make any changes based on those comments. With regard to comments concerning who determines and under what standards that DME is immediately needed, as well as the comments concerning the specific revisions related to immediate need, we first reiterate that DME to address an immediate need for urgent or emergent conditions does not require VA oversight or approval, and therefore would be issued by the treating or prescribing clinician without VA review. We next reiterate from the proposed rule that an immediate need for DME exists when a covered veteran has a medical condition of acute onset or exacerbation that manifests itself by severity of symptoms including pain, soft tissue symptomatology, bone injuries, etc. We believe the language in § 17.4025(b)(3) as proposed provides sufficient but non-exhaustive examples of the types of DME that are typically necessary to address such immediate needs (*i.e.,* splints, crutches, manual wheelchairs), and § 17.4025(b)(3) otherwise makes clear that urgent and emergent conditions meet the immediate need standards. We therefore do not make changes based on this comment. With regard to the comment concerning expressly adding home oxygen as covered DME, we clarify that home oxygen is considered DME for purposes of § 17.4025(b)(3) and (4) without further revisions to the proposed rule.

We received comments related to covered veterans' possible copayments in using community care under the VCCP, which we interpret to be related to § 17.4025(c) as proposed. Some comments urged that the rule should not change anything related to current copay structures and procedures. One comment asserted American Indian/Alaskan Native veterans should not be charged copayments for care received under the VCCP, as this was inconsistent with Federal trust obligations. We do not make any changes to the rule based on these comments and reiterate from the proposed rule that veterans will continue to be liable as applicable under §§ 17.108(b)(4) and (c)(4), 17.110(b)(4), and 17.111(b)(3) for copayments for community care that is furnished through the VCCP. The VCCP will not alter the current treatment of veteran copayments under VA's traditional community care program or the Veterans Choice Program. We also reiterate from the proposed rule that veterans who receive care from the Indian Health Service (IHS) and Tribal Health Programs (THP) under a sharing agreement with VA will not be affected by regulations that implement the VCCP; the existing VA reimbursement agreements between IHS, THPs and VA control all parameters of how that care is provided, including whether copayments are charged.

**§ 17.4030, Eligible Entities and Providers**

We received over 200 comments related to non-VA entities and providers that may furnish hospital care, medical services, or extended care services through the VCCP. We address these comments below in the order in which they raised issues related to the provisions in paragraphs (a)–(c) of § 17.4030 as proposed.

A majority of these comments asserted that VA should ensure non-VA providers are similarly qualified and competent as VA providers to furnish the same levels of care as VA providers. These comments more specifically urged that non-VA providers must: Be properly licensed/credentialed; use evidence-based treatment; and have specific training in clinical areas where VA has developed particular expertise (*e.g.,* post-traumatic stress disorder, traumatic brain injury, etc.). Some of these comments further stated that if non-VA providers cannot furnish care or services as well as VA providers, then those providers should not be an option that covered veterans may choose to furnish community care under the VCCP. Lastly, a few of these comments also asserted that if non-VA providers do not submit full medical documentation for care or services furnished under the VCCP (and not mere submission of invoices or bills), VA must not pay them. We interpret these comments to be related to § 17.4030(a) as proposed, as some of the comments specifically alluded to VA establishing more specific requirements for providers in the contracts, agreements, or other arrangements the providers enter into under § 17.4030(a).

Regarding the general need for VA to establish requirements for non-VA providers, we agree with the comments that it is critical for covered veterans to receive competent care from qualified non-VA providers should such veterans elect to receive care under the VCCP. However, we do not make any changes to § 17.4030 based on these comments. The rule at § 17.4030(c)(2) as proposed requires VA to assess the qualifications of the entity or provider to furnish the needed care or services in determining whether the provider is accessible to the covered veteran. These assessments can include licensing and credentialing information that VA collects under OMB control number 2900–0823. VA additionally requires submission of medical records as part of their claims for all non-VA care and services furnished under the rule (also under OMB control number 2900–0823) and as required by 38 U.S.C. 1703(a)(2)(A). VA reviews all licensing and credentialing information to ensure non-VA providers meet applicable standards for care needed, as well as medical records to ensure care was provided appropriately and within the scope of authorization. Although not part of the proposed rule, VA is establishing competency standards and requirements for the provision of care by non-VA providers in clinical areas where VA has developed special expertise, in accordance with section 133 of the MISSION Act. We are not regulating these standards to permit flexibility, as such standards are based on clinical practice and can be subject to change. VA's contracts, agreements, or other arrangements will impose requirements to meet these competency standards.

We received some comments that asserted VA should permit Medicare providers to participate in VCCP. We do not make changes based on these comments, as Medicare providers are a type of provider permitted under section 1703(c) to participate in VCCP, and are otherwise permitted to enter into contracts, agreements, or other arrangements with VA to furnish care and services under § 17.4030(a).

We received a few comments that requested clarification on whether or to what extent providers employed by VA could also participate in VCCP as eligible entities and providers to furnish care or services under § 17.4030(b) as proposed. We reiterate from the proposed rule, without changes to § 17.4030(b) as proposed, that providers who are employees of VA may not be acting within the scope of their employment while providing care or services through the VCCP. Essentially, VA providers may participate in VCCP as long as it is not during their VA-employed work hours.

We received a few comments that requested clarification of how VA would assess whether a non-VA provider is accessible to a covered

veteran under § 17.4030(c) as proposed. These comments generally seemed to inquire whether § 17.4030(c)(1) and (3) (related to VA assessing the length of time the veteran would have to wait to be seen by the non-VA provider, and the distance between the veteran's residence and that provider, respectively) were essentially VA's application of its access standards to non-VA providers, as such access standards were set forth in § 17.4040 as proposed. Those comments that assumed § 17.4030(c) did seek to apply VA's access standards to non-VA providers were primarily supportive of such an assumption. However, a few comments noted that applying such standards to non-VA providers was not feasible or advisable. One comment that opposed applying VA's access standards to non-VA providers more specifically asserted that non-VA providers would be discouraged from participating in the VCCP if they had to comply with VA's access standards, as this would amount to preferred treatment of veteran patients over non-veteran patients in terms of timeliness of appointments.

We clarify that VA did not intend for § 17.4030(c)(1) and (3) to establish a regulatory mechanism to apply VA's access standards as set forth in § 17.4040 to non-VA providers. This does not mean, however, that VA will not endeavor to ensure that community health care providers are able to comply with the applicable access standards established by VA, as VA is required to do so under section 1703B(f). To clarify VA's intentions, VA intends to establish access standards for non-VA providers in the contracts, agreements, or other arrangements that eligible entities or providers enter into under § 17.4030(a) as proposed, as opposed to establishing access standards for non-VA providers in regulation. We do not make changes to § 17.4030(c) as proposed based on these comments.

Although we do not make changes to § 17.4030(c) as proposed based on these comments, we do offer the following clarifications as requested by comments regarding how VA will use § 17.4030(c)(1) and (3) to assess whether a non-VA provider is accessible. By considering the length of time a veteran would have to wait to receive hospital care or medical services from a non-VA entity or provider under § 17.4030(c)(1) as proposed, VA can ensure that veterans receive care as quickly as possible. If a veteran selects a non-VA provider who cannot see the veteran for several months, VA would probably determine that provider was inaccessible, and could then provide the veteran with other options of non-VA providers to potentially schedule an appointment sooner. By considering the distance between the covered veteran's residence and the non-VA provider, VA can ensure that veterans receive care closer to their residence. If a veteran resides in New York and selects a provider in California (to receive care in California when they otherwise would not be residing in California at the time of the appointment), VA would probably determine that provider was inaccessible, and could then provide the veteran with other options of non-VA providers that would be closer to their residence at the expected time of the appointment. In either scenario (distance or time for an appointment), VA's decision regarding accessibility is not pre-determined; these will be case-by-case decisions. We believe these factors will be most relevant in situations where a covered veteran has not selected a particular non-VA provider, but is looking for VA to identify a non-VA provider that can furnish the care for them. In such cases, we would use these factors to determine which providers should be offered as possible options. If a covered veteran has selected a particular provider, we may determine in some cases that the provider is inaccessible (as in the New York/California example above), while in other cases, such cross-country travel might be approved (if, for example, there were only one or two providers in VA's network that furnished a specific type of service). In more typical cases, we anticipate that the veteran's selection of a particular provider will likely be approved, even if a particular provider might have a slightly longer wait time or be slightly further away from the veteran, as this would be the veteran's choice.

We also note that § 17.4030(c)(2) as proposed will consider the qualifications of the entity or provider to furnish the hospital care, medical services, or extended care services the veteran requires. If an entity or provider does not have the expertise or equipment necessary to provide the required care or services, the needed care is not accessible from that provider, and VA may not authorize a patient to receive care or services from that entity or provider. We raise this last factor in § 17.4030(c)(2) as proposed to reiterate as stated above that VA will consider these factors together to make accessibility determinations on a case-by-case basis, considering each veteran's specific needs. Sometimes, there may be several eligible entities or providers that could deliver care close to the veteran's residence, and in such a scenario, distance likely will not matter. In other situations, there may only be one provider near the veteran's residence, but this provider either has extended wait times or lacks the expertise or equipment to provide the necessary care. VA will need to balance these competing interests and the preference of the veteran to determine whether an entity or provider is accessible.

We are making minor changes to paragraph (c) to use the term covered veteran in lieu of the term eligible veteran in several places. The term eligible veteran is used in § 17.1530 because it is a defined term in § 17.1505. Under the VCCP regulations, we use the term covered veteran, as defined in § 17.4005. This change simply removes any ambiguity as to the term and does not alter the effect or meaning of the rule.

Lastly, we received a comment that requested VA specifically include in these regulations outreach, training, and other assistance to non-VA providers to expand the Patient-Centered Community Care (PC3) network, as the commenter asserted that such expansion is particularly critical to deliver community care in underserved areas. We do not make changes based on this comment, as this comment presents an operational request that is more appropriately addressed through contract or policy. We do clarify, however, efforts on VA's part to improve education of providers regarding the formation of contracts under section 1703(h) through the Community Care Network in the portion of this document that discusses miscellaneous comments.

**§ 17.4035, Payment Rates**

We received over 25 comments concerning the parameters under which VA establishes payment rates for care and services furnished through the VCCP, as set forth in § 17.4035 as proposed. We address these comments below in the order in which they raised issues related to provisions in paragraphs (a)–(e) of § 17.4035 as proposed. We note that some comments we received related more to administrative processes associated with payment for care and services (*e.g.,* how VA pays non-VA providers), rather than the regulatory requirements from the proposed rule; we will address such administrative comments in the section of this final rule related to miscellaneous comments.

We received some comments that asserted that VA should not pay below applicable Medicare fee schedules or prospective payment system amounts, to ensure non-VA providers are not

discouraged from participating in the VCCP. One comment was more specific, noting that VA should pay at full applicable rates for inpatient care that go beyond Medicare's professional fee schedule, including at academic hospitals that have both indirect medical education (IME) and direct medical education (DME) billing components. We do not make changes to § 17.4035(a) as proposed based on these comments. The limitation of VA's payment rates to be no higher than Medicare, versus being designated the same as Medicare rates, is consistent with section 1703(i)(1) that, with exceptions, the rates VA pays for care and services may not exceed the applicable Medicare rate. We clarify, however, that VA has typically paid at applicable Medicare rates under the Veterans Choice Program, to avoid the scenario raised by comments where non-VA providers are discouraged from participating in VA community care programs. With regard to the specific concerns in paying IME or DME billing for academic hospitals, we also do not make changes to § 17.4035(a) as proposed but do clarify that VA does pay adjustments to Medicare costing as applicable and appropriate.

One comment requested that VA provide more details on how it will determine payment rates for inpatient services provided by critical access hospitals, as the statutory authority for setting rates for such hospitals (42 U.S.C. 1395m) was referenced in § 17.4035(a) as proposed. This comment further voiced support for VA using a cost-based approach to determine rates for critical access hospitals. We do not make changes based on this comment. We believe the language in § 17.4035(a) and its reference to 42 U.S.C. 1395m is sufficient to allow VA to calculate appropriate rates for critical access hospitals.

One comment requested that VA confirm that use of the term Medicare rate in § 17.4035 generally means a rate unaffected by Federal budget sequestration. We do not make changes based on this comment and can only confirm that to the extent Medicare's rates or adjustments are unaffected by budget sequestration, so too will VA's rate setting be unaffected under the parameters established in § 17.4035. Similarly, and inversely, if sequestration did modify the rates paid under the Medicare program, VA's rates would also potentially change. We do not believe sequestration would change the Medicare fee schedule, but we acknowledge that it could affect the Centers for Medicare and Medicaid Services' (CMS) ability to pay. VA's payment rates for any particular service to any particular provider will be established through the terms set forth in the contract or agreement and may reference the Medicare fee schedule in general. If such terms are fixed to a specific dollar amount, any change in the Medicare rate will not otherwise serve to modify the terms of that contract or agreement. However, if the terms in the contract or agreement are relative, such as by referencing the Medicare fee schedule, then changes to the Medicare fee schedule would carry over per the terms of the contract or agreement.

The parenthetical language in § 17.4035(a) as proposed would establish that VA's payment rate adjustments occur only on an annual basis in line with Medicare's annual payment updates. One comment requested that VA revise this parenthetical language to require VA to conform to Medicare's rate adjustment approaches in their entirety. This change would result in changes to VA's rates on a much more frequent basis than the annual payment updates issued by Medicare that VA presently follows. We do not make changes based on this comment. VA does not have access to the information or systems that Medicare uses to adjust payments on a more frequent basis than annually, based on such factors as quality or performance, utilization, etc., and as such, cannot operationalize this aspect of the Medicare program's payment schedule.

We did not receive comments concerning § 17.4035(b) as proposed, and therefore do not make any changes.

We received one comment recommending VA revise § 17.4035(c) as proposed, to expand the definition of highly rural area to include rural area. This comment further stated that VA should utilize the Rural-Urban Commuting Areas system, developed by the Department of Agriculture and the Department of Health and Human Services, to define rurality. We do not make changes based on this comment. We reiterate from the proposed rule that use of the term highly rural area is prescribed by and specifically defined in statute in section 1703(i)(2)(B).

A few comments requested clarification as to how VA will determine that limiting its payment rates to applicable Medicare rates is not practicable, as permitted under § 17.4035(d) as proposed. Some comments further requested clarification of how eligible entities or providers would be notified of allowable payment rates in excess of Medicare rates. One comment specifically requested that VA should ensure women veterans' medical needs were considered as a factor when establishing rates in excess of Medicare. We do not make any changes based on these comments, although we do reiterate from the proposed rule that payment rates are ultimately set forth in the terms of the contract or agreement under which the care and services are furnished. As set forth in § 17.4035(d), the factors that could prove persuasive in terms of determining impracticability as identified in the proposed rule include patient needs, market analyses, and provider qualifications, among others. General market conditions usually establish that supply and demand can establish a price equilibrium, and we believe these conditions will also inform when it would be impracticable to pay the Medicare rate.

A few comments requested clarification as to how VA will determine payment rates for non-Medicare services, particularly for extended care services (*e.g.,* home health, adult day health care, and respite care). Some of these comments further requested that VA be transparent about establishing and updating these rates, but not necessarily that VA revise § 17.4035 to do so. We do not make changes based on these comments. As noted in § 17.4035(a), the rates paid by VA for hospital care, medical services, or extended care services furnished pursuant to procurement contract or an agreement authorized by §§ 17.4100 through 17.4135, will be the rates set forth in the terms of such contracts or agreements. Any services for which there is no Medicare rate will be determined in accordance with the defined terms in the contract or agreement.

We received one comment related to the portion of the preamble that explained § 17.4035(e) as proposed, which requested that VA explain why fiscal year (FY) 2003 data is used to determine amounts under VA's Alaska Fee Schedule. We do not make changes based on this comment but clarify that the VA Alaska Fee Schedule was originally introduced following an actuarial study completed by VA in 2001, in which VA determined that special circumstances exist in Alaska that warranted a specific fee schedule be calculated in order to avoid limitations on Veteran access to care. Based on this study, and pursuant to notice-and-comment rulemaking, VA promulgated a regulation at 38 CFR 17.56(d) to establish the VA Alaska Fee Schedule (*see* 70 FR 5926, February 4, 2005). The provision in § 17.56(d) as originally

promulgated used FY 2003 data and indicated that VA will increase the amounts on the VA Alaska Fee Schedule annually beginning in 2005 in accordance with the published national Medicare Economic Index (MEI). VA has used the MEI to annually update data from the previous fiscal year's Alaska Fee Schedule, since this schedule was first established. Given that these updates have occurred regularly, and that VA's systems are built on maintaining this schedule, we believe it would be administratively burdensome and likely of little value to change the baseline reference from FY 2003. We further note that we received no comments recommending a change from this baseline; the commenter simply asked for VA's rationale for using this data. We believe this methodology has proven effective for providers in Alaska.

We received a few comments that requested VA clarify or confirm, and further expressly revise § 17.4035 to reflect, that VA is always the primary payer for care and services that covered veterans receive through the VCCP. A related comment also requested VA revise § 17.4035 to indicate that VA's payment is payment in full and extinguishes a covered veteran's liability. We do not make any changes based on this comment but reiterate from the proposed rule that under section 1703(j), VA shall recover or collect reasonable charges for such care or services from a health plan contract described in section 1729 in accordance with such section. These provisions of law establish VA's role as the primary payer. We further note that VA will seek to ensure that the contracts or agreements VA enters into with eligible entities and providers will include terms that limit their ability to seek payment from a veteran when VA has made any payment for care or services furnished to that veteran on VA's behalf. There is no need for regulatory language to ensure that covered veterans do not face additional liability (other than applicable copayments) for using the VCCP.

Lastly, we received one comment that urged VA to adopt value-based reimbursement models, particularly for mental health care, as permitted under section 1703(i). This comment further stated that the ability of VA to use value-based models should encourage VA's development of innovative payment models, including bundled payment for certain episodes of care. We do not make any changes based on this comment. Again, the contract or agreement will set forth the terms of payment, which could include the use of value-based models. To the extent such value-based models could result in payment that exceeds the limitation set forth in § 17.4035(a), VA has the option of utilizing the exception in § 17.4035(d) when applicable to permit the use of such models.

We are making minor changes to this section to reflect the promulgation of regulations implementing the Veterans Care Agreement authority in section 1703A. Specifically, we are replacing the reference to section 1703A of this title and referring instead to §§ 17.4100 through 17.4135, as these regulations were added to the Code of Federal Regulations through a separate VA rulemaking published on May 14, 2019 (RIN 2900–AQ45, see 84 FR 21668).

**§ 17.4040, Access Standards**

We received over 18,000 comments related to the substantive provisions of the access standards in § 17.4040 as proposed. For the sake of clarity, we have divided the discussion below into three main sections. The first section will address the general concerns in comments that are related to both the average drive time and wait time standards as set forth in § 17.4040 as proposed. The next section will address more specific substantive issues related to the average drive time standards, and the last section will address more specific substantive issues related to the wait-time standards. We also clarify that a majority of these comments were duplicated form responses, and we address the access standard issues as jointly raised below.

**Access Standards Generally**

We received comments that generally opposed both the drive-time and wait time access standards as proposed, based primarily on assertions that the access standards were arbitrary because they were not realistic, feasible, or sustainable, and VA did not conduct enough research of all existing access models to properly propose its own access standards. Some of these comments further asserted that VA should have delayed proposal of access standards until more research or analysis could have been completed (to include VA waiting on the anticipated results of the market area assessments required by section 7330C(a) as added by section 106 of the MISSION Act, and not before conducting pilot testing as needed).

Regarding the assertions in comments that the access standards as proposed by VA were arbitrary, we reiterate from the proposed rule that the drive-time standards were derived from specific analyses that showed trends of 30-minute drive times for primary care and 60-minute drive times for specialty care in TRICARE, State Medicaid plans, State insurance departments, and commercial health plans. For instance, TRICARE Prime (the Department of Defense's most comprehensive managed care plan, uses a 30-minute drive time for primary care and a 60-minute drive time for specialty care for non-active duty beneficiaries. VA also assessed both the Medicaid Plans and other primary insurance plans of 14 States, and found a majority of those States have a 30-minute travel time standard for primary care, and a 60–90-minute travel time standard for specialty care under State Medicaid plans and 45–60 minute travel time standards for other primary State insurance plans. VA determined that it would be reasonable to fall in line with these other network expectations throughout the industry. VA further used the results of its access standards analysis to develop and model several options using VA's Enrollee Health Care Projection Model (EHCPM). VA's EHCPM allowed VA to consider best practices in the industry in its development of access standards as well as the financial impact of various access standard scenarios. After considering this information from analyses of similar drive times in other health care plans as well as from VA's EHCPM, VA determined that its access standards should reflect an average drive time-based criterion that considers the care or services needed in relation to the veteran's residence, which is a similar approach as TRICARE Prime related to travel standards (opting to use average driving time versus mileage). Similarly, the wait time standards were derived from research of non-VA network expectations throughout the industry, and they fell within the range of appointment wait-time standards found in other government organizations, State programs, and commercial entities (*e.g.,* 7–28 days for primary care and 15–30 days for specialty care). Further, the proposed wait-time standards are achievable in most VA facilities and are consistent with capabilities identified in the private sector. On average, VA national wait times in March 2019 for new appointments (*e.g.,* the first appointment in a new episode of care versus a subsequent appointment in the continuation of an existing episode of care) was approximately 20.6 days for primary care, 10.8 days for mental health care, and 22.4 days for specialty care. These wait times have decreased since the December 2018 reporting period included in the proposed rule. The proposed wait-time standard of 20

days for primary care and mental health, for example, is both in line with other similar industry standards and is a manageable goal for access to VA care. We do not make changes based on these comments, as we believe VA's access standards as proposed were based on reasoned research and analysis and are therefore not arbitrary.

Regarding the assertions in comments that VA should have delayed proposal of its access standards until more research or analysis could have been completed (to include waiting for VA's market area assessments and potential pilot testing to conclude), VA was unwilling to engage in such delay as we believe it would have delayed implementation of access standards well beyond the statutory deadline of June 6, 2019. Pilot testing is an extensive process, which would have required the results of the summary market area assessments, which themselves were not completed at the time of publication of the proposed rule.

We received a few comments that opposed the access standards generally because of VA's designation of nearly all hospital care, medical services, and extended care services available under its medical benefits package. According to the comments, VA's designation of so many services to have an applicable access standard was contrary to Congressional intent. According to these comments, Congress only intended for VA to designate a few types of care or services, and a designation of more care and services creates a risk of decreased funding of VA's direct provision of care. Particularly, one comment stated that VA's impact analysis for the proposed rule indicated that VA will consider the performance of its facilities on wait time access standards when making resource allocation decisions and inquired if funding or resources would be withheld from a facility if it did not meet the designated access standards. We do not make changes based on these comments. We acknowledge that VA did consider during the development process of the legislation that would become the MISSION Act that only a limited number of care or services might ultimately be designated as having access standards, VA proposed instead to designate a majority of the care and services available under its medical benefits package. VA's broader designation of most care or services maximizes the choice of covered veterans and prevents veterans from having to navigate a bifurcated system where more limited care and services would be available under the access standard eligibility than under any other eligibility criterion for VCCP. Designation of access standards for a majority of VA care and services makes administration of the VCCP simpler for VA for this same reason and ensures better coordination of care. VA's designation of access standards for a majority of its care and services, however, does not force veterans into the community to receive care. We reiterate from the discussion at the beginning of this final rule that section 1703(d)(3), as regulated at § 17.4020(a), requires that eligible covered veterans must still elect to receive care and services through the VCCP. We clarify that VA's statement from the impact analysis for the proposed rule, as referenced in one of the comments, is not a statement of intent to withhold resources or funding per se if a facility is not meeting access standards. It is a statement that VA must consider use of its services when considering allocation of its resources, which could include investment into facilities that require assistance to meet access standards. Regarding the question of Congressional intent more specifically, we do not read any limitation in 38 U.S.C. 1703 or 1703B regarding the number of designated access standards; these statutes provide broad authority to the Secretary to make these determinations and do not constrain his authority in the ways described in the comments.

We received comments that opposed the access standards generally because it was unclear whether they would be applied to non-VA providers, with some comments further requesting that VA make non-VA provider participation in VCCP contingent upon compliance with the same standards VA adopts for its direct delivery of care and services. Essentially, these comments asserted that unless care available under the VCCP could meet (or exceed) VA's access standards, it should not be accessible to covered veterans because it would not be providing care that could be received sooner or closer than VA could provide. We do not make changes to § 17.4040 as proposed based on these comments. We first reiterate from the section of this final rule that discusses eligible entities and providers that VA will endeavor to ensure that community providers are able to comply with the applicable access standards established by VA. Such access standards for non-VA providers, however, will be used to measure network adequacy to ensure that covered veterans who elect to receive care through the VCCP are generally getting timely care that is near to their residence. VA will not strictly apply its access standards to eligible entities or providers as a factor to determine their eligibility to furnish hospital care, medical services, or extended care services furnished the VCCP. Although we understand the rationale offered in the comments that assert VA should strictly apply its access standards to non-VA providers, the concept of access standards for determining VCCP eligibility is fundamentally different than the concept of access to care and services in the private sector. VA must ensure its access standards establish a consistent mechanism to provide the option of choice in the community to the covered veteran if VA cannot meet those standards. In the private sector, access standards are a mechanism to measure performance and network capacity, not eligibility. As we have said before, no covered veteran eligible to receive community care is required to seek care in the community. The veteran could elect to receive care from VA or could inquire about seeking care in the community and change his or her mind if the community options are not convenient (in terms of distance or scheduling availability). As VA gains more experience with VCCP, we anticipate our systems will be able to provide information to veterans and providers regarding community locations and wait-times so that veterans can make informed decisions that work for them. We also reiterate from the section of this final rule that discusses eligible entities and providers that we agree with a comment that stated that VA should not apply its access standards to eligible entities and providers for purposes of eligibility as this could amount to preferred treatment of veteran patients over non-veteran patients and could discourage eligible entities and providers from participating in the VCCP.

We received comments that opposed the access standards generally because the comments asserted that not having different (presumably, longer drive time or wait time) standards for specialized VA care or for VA's foundational services could erode patient volume necessary to sustain such care and services at VA, and that VA should take a more refined approach to distinguishing access for such services to ensure the quality of care and veteran satisfaction is maintained. A related comment more specifically urged VA to ensure that care and services to treat spinal cord injury be excluded from any designated access standard, to ensure that such care may only be provided by VA. We do not make changes based on these comments.

We reiterate from an earlier discussion in the purpose and scope

section of this final rule that expanding access to care and services in the community does not equate with forcing veterans into the community to receive care; covered veterans must still elect to receive care in the community if eligible under VA's access standards. We agree with the comments that it is critical for VA to maintain focus on all care and services it directly provides to veterans, and we reiterate from the proposed rule that VA will continue to sharpen its focus on directly providing those services that are most important to the coordination and management of a veteran's overall medical and health needs, including continued examination of whether its designated access standards should be revised with future rulemakings to account for specialized areas of VA expertise.

We received a few comments that requested clarification of why VA did not designate a particular access standard for VA foundational services, and one comment further seemed to assert that lack of such designation meant that these services were not covered under the VCCP. We do not make changes based on these comments but clarify that the designated access standards cover all forms of hospital care, medical services, and extended care services, with the exception of institutional extended care services (this exception is discussed further below).

We received one comment that requested VA either revise § 17.4040 to add an access standard for institutional extended care service (*e.g.* nursing home care) or provide a more robust rationale than provided in the proposed rule for why institutional extended care was not included within VA's designated access standards. We do not make changes based on this comment but do provide additional rationale as requested by the comment. Institutional extended care such as nursing home care is simply not apt to be measured in terms of access in the same manner as other care and services that, generally speaking, are more standardized and available in the community. For example, the law in each State controls admission factors for Medicaid-participating nursing homes, which introduces too many variables to provide relative comparisons to VA nursing home admissions. As another example, Medicaid-participating nursing home facilities in the community generally admit patients on a first-come, first-served basis, and maintains waiting lists for admission. When a bed is vacant, facilities consult the wait list to determine who is next on the list to be admitted, but it is not an accurate reflection of when any patient will be admitted, primarily because many people on the wait list are not yet in need of nursing home care or they have been placed in another facility. In addition, a State's regulations could control when a patient may be admitted under circumstances beyond first-come, first-served—the most common example is admission to a nursing home facility directly from a hospital due to medical need. People being admitted directly from a hospital level of care may be seen as having a greater need before anyone on a wait list. Some States also have rules concerning placing only patients of the same gender together in each room, or rules permitting admission preference in cases requiring intervention by the Department of Human Services or Adult Protective Services (or similar agency). We cannot provide a full survey of all State laws that may control or influence Medicaid-participating nursing home facilities in the community, and it may be that these nursing homes also create special admission rules to receive Medicare-eligible individuals who are in need of acute rehabilitation (for instance, for a stay not to exceed 20 days). We reiterate that there are many variables for comparison to admission to VA nursing home facilities that make assignment of a designated access standard impracticable, as it would not reflect VA's relative ability or inability to directly provide nursing home care.

We received one comment that requested VA revise § 17.4040 to add an access standard specifically for mental health care and services that would be deemed to be needed immediately, as similar to any access standard that VA might apply for emergency care or same-day appointments. We do not make changes based on this comment. We will discuss more fully in the section of the rule below that addresses wait times specifically, but should any care or service under a wait time access standard be deemed necessary for a covered veteran prior to reaching the ending date of the applicable wait time standard under § 17.4040(a)(1)(ii) and (a)(2)(ii), then the best medical interest eligibility criterion under § 17.4010(a)(5) would enable a covered veteran to be seen for such care or services through the VCCP, assuming criteria under § 17.4010(a)(5) were met. We further note that emergent mental health care is available from VA on a same-day basis, and VA's urgent care benefit under § 17.4600 (section 1725A) should also make some services available on an expedient basis.

We received one comment that requested VA clarify the interaction between the average drive time and wait time standards, as both § 17.4040(a)(1)(i) and (a)(2)(i) indicate that the standards are considered together to determine whether they are met (these regulatory clauses indicate that the drive time is considered as well as the wait time). The comment more specifically asserted that the average drive time and wait time should be independently assessed (the regulatory clauses should not use the term and as a connector, but rather a term such as either), to prevent scenarios where (in the case of the primary care standard) a facility that can provide the care or services may be more than 30 minutes away, but a covered veteran would not quality for VCCP because that facility can offer the care or services within 20 days. We do not make changes based on this comment but do clarify that the average drive time is an independent qualifier and the wait time is not. The structure of the regulatory clauses in § 17.4040(a)(1)(i) and (a)(2)(i) qualifies instances where a VA facility that can offer the care or services may be within the average 30 minute driving time (in the case of the comment's primary care example), but still not able to provide the care within 20 days—in such cases, a covered veteran would be eligible to elect to use the VCCP. However, if a VA facility that can offer the care or services needed is not within 30 minutes average drive time (in this example), then the covered veteran would qualify for VCCP without any assessment of how long it would take a facility further away to provide the needed care or services. The wait time cannot be an independent qualifier because there must be a context within which to apply the wait time—otherwise, the wait time could be applied to any VA facility that could provide the care or services needed regardless of the average drive time from the covered veteran's residence. We believe that the regulation addresses the commenters concern: VA must be able to furnish care within the average drive time and the wait time standard. If VA cannot meet both conditions, or in other words if it fails either condition, the covered veteran would be eligible to elect to receive community care.

The proposed rule stated that if VA is able to furnish a covered veteran with care or services through telehealth, and the veteran accepts the use of this modality for care, VA would determine that it was able to furnish such care or services in a manner that complies with designated access standards. We received one comment that urged VA to ensure that the option for the veteran to have face-to-face care would be maintained if the veteran did not choose the telehealth modality. We do not make

changes based on this comment. As stated in the preamble of the proposed rule, VA will not require a veteran accept the use of telehealth for the purpose of meeting VA's designated access standards.

Lastly, we received a few comments that requested clarification of how VA will apply the access standards for homeless Veterans without a residence. We do not make changes based on these comments but clarify that homeless veterans may currently provide an address to VA that is recorded in the Veterans Health Information Systems and Technology Architecture; this address is used for other VHA benefits and may be applied to veterans seeking to participate in VCCP as well. For example, any homeless veteran who is residing in a place supported by a Department of Housing and Urban Development-VA Supportive Housing voucher can list that address, and any veteran using one of our community-based programs like the Homeless Grant and Per Diem or Health Care for Homeless Veterans programs can supply the address of the service provider. Covered veterans that do not have a residence may be assessed under other eligibility criteria in § 17.4010(a)(1) through (3) and (5) and (6), to receive care or services through the VCCP.

**Average Drive Time Standards**

We first address comments similar to those discussed above regarding the access standards generally, where commenters suggested that VA should apply its average drive time standards to the locations of eligible entities and providers from which covered veterans might elect to receive care through the VCCP, to ensure such non-VA care would not be further away from a veteran's residence than VA care. Another comment urged VA to track zip codes of where non-VA care was provided through the VCCP, to ensure care was received at the nearest facility. We do not make changes based on these comments. We reiterate from the discussion above that the access standards VA will establish for eligible entities and providers will be used to monitor network adequacy and will not be used as a limitation on a covered veteran's eligibility to receive care and services through the VCCP. VA must ensure its access standards establish a consistent mechanism to provide the option of choice in the community to the covered veteran if the VA cannot meet those standards. In the private sector, however, access standards such as average drive times are a mechanism to measure performance and network capacity, not eligibility. We also restate from discussion earlier in this final rule that VA will use § 17.4030(c)(1) and (3) to assess whether a non-VA provider is accessible. By considering the length of time a veteran would have to wait to receive hospital care or medical services from a non-VA entity or provider under § 17.4030(c)(1), VA can ensure that veterans receive care as quickly as possible. If a veteran selects a non-VA provider who cannot see the veteran for several months, VA would probably determine that provider was inaccessible, and could then provide the veteran with other options of non-VA providers to potentially schedule an appointment sooner. By considering the distance between the covered veteran's residence and the non-VA provider under § 17.4030(c)(3), VA can ensure that veterans receive care closer to their residence. If a veteran resides in New York and selects a provider in California (to receive care in California when they otherwise would not be residing in California at the time of the appointment), VA would probably determine that provider was inaccessible, and could then provide the veteran with other options of non-VA providers that would be closer to their residence at the expected time of the appointment. In either scenario (distance or time for an appointment), VA's decision regarding accessibility is not pre-determined; these will be case-by-case decisions.

We received some comments that asserted VA should not use an average drive time standard but instead should continue to use a mileage-based distance standard, with certain of the comments additionally calling for new mileage standards (one comment advocated a new standard of 20 miles for vision-related care or services specifically, while other comments advocated new standards of 30 or 35 miles without specifying particular care or services). We do not make changes based on these comments. We reiterate from the proposed rule that a mileage-based access standard can be a poor indicator of actual conditions that affect travel to receive care and services, as such a standard does not recognize the inherent variation of driving speeds in rural versus urban areas (as traffic levels and speed limits typically allow rural residents to travel farther, faster than urban residents). Also, covered veterans may benefit from a drive-time standard as opposed to a mileage-based standard, such as the case with veterans in mountainous areas where it can take significantly longer than 30 minutes (or even 60 minutes) to travel 40 miles. We believe that use of an average drive-time criterion versus a mileage standard will provide a more consistent and equitable standard of access for all covered veterans.

We received other comments that urged VA to adopt different average drive time standards than the 30 minutes and 60 minutes in § 17.4040(a)(1)(i) and (a)(2)(i) as proposed, respectively. Multiple comments advocated for an average drive time standard of 40 minutes for specialty care, 30 minutes for all services, 60 minutes for all services, or that the standards in § 17.4040(a)(1)(i) and (a)(2)(i) should be flipped, where 60 minutes would apply to primary care and mental health and 30 minutes would apply to specialty care. Particularly, the comments that advocated flipping the 30-minute and 60-minute average drive time standards stated that specialty care is arguably more urgently needed than primary care, or that travel to receive specialty care is more burdensome, and therefore the lesser timeframe of 30 minutes should be applicable to specialty care. We do not make changes to § 17.4040(a)(1)(i) or (a)(2)(i) based on these comments.

We reiterate from the proposed rule and the expanded discussion earlier in this final rule that the average drive-time standards are derived from specific analyses that showed trends of 30-minute drive times for primary care and 60-minute drive times for specialty care in TRICARE, State Medicaid plans, State insurance departments, and commercial health plans. We further clarify that the different drive-time standards for primary care versus specialty care particularly are not intended to reflect the relative importance of one type of care versus the other, but rather the relative availability of one type of care versus the other, as specialty care tends to be generally less available than primary care and therefore requires longer travel times to reach on average. Nearly all individuals in a geographic area require primary care at some point, typically several times per year. But only a subset of these same individuals may require specialty care, and not likely with the same frequency. We believe distribution of health care resources follows the basic premise outlined above, to result in specialty care generally being less widely geographically dispersed, particularly considering that such specialty services often require specialized facilities and equipment that are difficult and costly to replicate. For these reasons, we believe it is widely understood that patients often times will need to travel

a bit farther for specialty care than primary care.

We received multiple comments related to how VA will calculate average drive times under § 17.4040(b) as proposed. Many of these comments asserted that there were too many variables related to actual drive time (*e.g.,* road or weather conditions, congestion or traffic) for VA's calculations to be accurate if it used a strict average of drive times throughout a day (or week, or other defined timeframe) versus using a predictive system that is related to the time of appointment. While some of these comments urged VA to adopt new definitions or clarifications to assist with calculating average drive times (*e.g.,* defining the term hazardous weather in § 17.4010(a)(5)(vii)(A)), other comments suggested that, without disclosing proprietary information related to the geographic system software VA will use, VA's calculations should consider how factors change throughout a day, particularly traffic patterns. More specifically, a few comments urged that any drive time calculation VA uses must consider peak drive times to account for routine spikes in traffic. We do not make changes to § 17.4040(b) as proposed based on these comments. We believe that it is more veteran-centric to maintain the operational flexibility to refine and improve VA's calculations in response to experience, feedback, and changing real-world conditions, rather than to detail in regulation a specific methodology or considerations that could constrain VA's ability to improve the calculation of average drive time in the future.

We first note that further definition of terms in § 17.4010(a)(5)(vii)(A), as requested in one comment, does not have any bearing on eligibility determinations under § 17.4040(b) as proposed (we also believe that terms to characterize an unusual or excessive burden in § 17.4010(a)(5)(vii)(A) are sufficient as proposed). We address the comments that requested clarification on how VA will calculate average drive times with other comments regarding VA's administration of its community care programs in the portion of this final rule that discusses miscellaneous comments.

We received some comments that requested VA consider use of non-personal vehicles (*e.g.,* public transit) when calculating applicable average drive times. We do not make changes based on these comments. We reiterate from the proposed rule that calculating average drive time based on the use of a personal vehicle applies to many of the veterans we serve, and that it would be too difficult and potentially costly to consistently implement and operationalize a system that considers the variety of transportation options potentially available to an individual veteran. In major metropolitan areas, a veteran could travel by personal car, bus, or rail, and each of these would have different travel times.

**Wait Time Standards**

We first address comments that opposed the 20-day or 28-day wait time standards based on the timeframes themselves. Some comments stated that these timeframes were too long for covered veterans to wait to be seen when they may have conditions or concerns requiring more immediate attention, with a few comments further urging VA to adopt different standards (for instance, 14 days or less for all services, 20 days for all services, or 14 days for primary care and 20 days for specialty care). Other related comments asserted that the wait time standards in § 17.4040(a)(1)(ii) and (a)(2)(ii) should be flipped, where 28 days would apply to primary care and mental health and 20 days would apply to specialty care, because specialty care is arguably more urgently needed than primary care. We do not make changes based on these comments. To address the concern that 20 or 28 days as applicable is too long to wait to address more immediate health care needs, we clarify that these are timeframes by which VA can assess whether it can provide care and services under normal and not urgent or emergent circumstances. Should any care or service with an applicable wait time be deemed necessary for a covered veteran prior to reaching the ending date of such wait time standard, then the best medical interest eligibility criterion under § 17.4010(a)(5) might enable a covered veteran to be seen for such care or services through the VCCP (assuming criteria under § 17.4010(a)(5) were met). To address the comments concerning the 20-day and 28-day wait times being flipped, we reiterate from the section above that access standards for primary care versus specialty care are not intended to reflect the relative importance of one type of care versus the other, but rather the relative availability of one type of care versus the other, as specialty tends to be generally less available than primary care and therefore can requires longer wait times on average.

The preamble of the proposed rule introduced the concept that VA preliminarily had established a goal of reducing the wait times for primary care and mental health services from 20 days in § 17.4040(a)(1)(ii) as proposed to 14 days no sooner than June 2020. Although this reduction from 20 days to 14 days was not put forth in proposed regulation text, we invited and received comments on this issue, the vast majority of which recommended that VA should not wait until 2020 to reduce such wait times to 14 days. Conversely, we received a few comments that VA should not reduce the primary care or mental health wait times to 14 days prematurely, and that VA should focus on meeting the 20-day standard first. More specifically, one comment asserted that VA should wait for the results of VA's market area assessments to drive any potential future reductions in wait times. We do not make changes based on these comments, but reiterate from the proposed rule that presently, a 14-day wait-time standard would be difficult for VA to implement due to the current availability of providers and variability in appointment wait-times across VA facilities. However, VA will pursue additional rulemaking should we proceed with the goal to reduce the primary care and mental health wait time standards from 20 days to 14 days.

We received comments that did not necessarily oppose the wait-time access standards, but that requested clarification of how VA would determine whether care was primary care, specialty care, or mental health care. Some related comments more specifically asserted that certain care should fall within the 20-day standard for primary care, for instance, most women's health care services, physical therapy, and traumatic brain injury. Another comment advocated that certain case management services associated with assisting homeless veterans should be considered specialty care. We do not make changes based on these comments. We believe in a majority of cases that it will be clear what standard should be applied to what care. Because we believe these comments are primarily concerned that certain services will not be given the benefit of relatively shorter wait times, we reiterate that if care is determined to be needed prior to reaching the ending date of an applicable wait time, then the best medical interest eligibility criterion under § 17.4010(a)(5) would enable a covered veteran to be seen for such care or services through the VCCP (assuming criteria under § 17.4010(a)(5) were met). We further advise that VA is experienced in determining whether care is primary care or specialty care, as VA uses this distinction to assess copayments under § 17.108.

We received one comment that requested VA revise § 17.4040(a)(1)(ii)

and (a)(2)(ii) to establish that the start date to begin counting any applicable wait time should be the date that the services are clinically indicated to be needed, and not the date of request for an appointment. We do not make changes based on this comment. By shifting the start of the wait time standard under the VCCP from the clinically indicated date to the date of request, VA can optimize consistency in decisions of eligibility that employ the wait time access standard. Consistency in decisions regarding eligibility is desirable because it assists VA to accurately forecast the use of VCCP under this standard, and because it supports parity in eligibility determinations to support a sense of fairness in veteran experience in using the VCCP. Additionally, the option for the covered veteran to choose a later date in consultation with a provider still permits for the wait time standards to be counted starting on a date that is later than the date of request, which could encompass a starting date when the services would be considered clinically indicated.

**Miscellaneous Comments**

We received many comments that did not directly relate to any regulatory sections from the proposed rule, but that expressed concerns with VA's administration of its community care programs and further suggested improvements. Although we do not make changes to the proposed rule based on these comments because they are beyond the scope of the proposed rule or address issues that would best be handled through policy or contracting mechanisms, we summarize the comments below by grouping them by topic and indicate where we provide clarifications.

**Transition From the Veterans Choice Program**

We received comments related to VA's transition from the Veterans Choice Program (Choice) to the Veterans Community Care Program (VCCP), which primarily requested clarification of administrative issues related to VA's contracting efforts to ensure that there was a smooth transition to the VCCP. The largest administrative issue raised in comments was how VA would mitigate gaps in coverage in transitioning to the VCCP, where specific requests for clarifications included: Whether VA anticipated delays in implementation due to any contract protests; whether the same services offered under Choice contracts would be offered under VCCP contracts (and more specifically, Veterans Care Agreements); whether providers under Choice provider agreements would be grandfathered into VCCP contracts or agreements (essentially asking whether Choice providers would be considered VCCP providers automatically until VCCP contracts can be finalized); and whether VA would issue guidance on transition from Choice to VCCP, to include more information on ''other arrangements'' under which care can be provided. VA has modified one of its community care contracts that provided coverage under the Veterans Choice Program to engage the same third-party administrator (TPA) (TriWest Healthcare Alliance) to provide for expanded nationwide coverage for the VCCP until VA's Community Care Network (CCN) contracts have established a fully functional network of providers. We believe this nationwide engagement of the same TPA from the Veterans Choice Program to administer the VCCP, until the CCN contracts are in place and the networks required by those contracts are fully operational, will allay many concerns regarding transition to the VCCP, as the administrative procedures should be familiar to those providers that participated under the Veterans Choice Program.

A related comment asserted that VA should standardize its contracts and contracting processes nationally, to avoid what the comment asserted was regional variation in contracts and contracting processes that are present in other non-VCCP community care programs. This comment also urged VA to make such contracts formed under section 1703(h) publicly available, and that any rules contained in such contracts that seek to control the actions of eligible entities and providers should be developed by notice-and-comment rulemaking so that stakeholders (that are not the entities or providers) can provide input on the impact of such rules on entities or providers. We do not make any changes based on these comments. Any VA decisions regarding contracting processes and standardization are implemented through separate processes and actions, potentially including policies and acquisition regulations. Separately, contracts within the meaning of section 1703(h), and solicitations leading to such contracts, are and will be subject to the existing, comprehensive legal framework governing public disclosure of information relating to such procurements and contracts. Any VA decisions regarding public disclosures of information relating to such procurements and contracts will be made in accordance with those laws. Finally, VA does not commit to establishing all contractual requirements through notice-and-comment rulemaking, and does not commit to establishing only national contracts. Such commitments are incompatible with the legal and operational framework of Federal procurement, including the flexibility, discretion, and independence that are often integral to the process of defining requirements.

**Veterans Need More Information To Inform Their Election To Receive Care Through the VCCP**

We received comments that indicated VA was not providing enough information to veterans to enable them to make informed choices of whether to elect to receive community care. These comments primarily stated that comparisons between VA care and community care were not apparent at the point veterans might elect to receive community care, and that veterans needed access to more timely comparisons between: VA and non-VA wait times; distances from a veteran's residences to VA and non-VA providers; and relative competency of VA and non-VA providers (particularly, for care to treat conditions such as posttraumatic stress disorder and traumatic brain injury). Some of these comments suggested specific improvements (such as ensuring non-VA provider directories are updated and available to veterans), where other comments requested VA clarify how relevant comparative information will be provided to veterans to elect to receive community care as required by section 1703B(b). VA understands the desire for more information so covered veterans can make informed choices regarding providers. VA has included community provider information in the VA facility locator on *www.va.gov* that shows both VA and community providers. This will allow covered veterans to see the locations of specific community providers in relation to VA providers. As VA begins to implement the new CCN contracts, appointment availability timeframes will also be available for the VA to share with covered veterans to assist them in making a decision on providers.

**Implementation of VA's Average Drive Time Standard**

VA received comments that requested clarification on how VA will calculate average drive times. We note that some detailed information regarding average drive time calculations and algorithms is proprietary. At a general level, VA's

calculation of average drive times between the veteran's residence and an applicable VA facility will take into consideration a variety of factors, including: Distance, route options, and speed limits. In its current configuration, VA's geographic information system tool bases these calculations on historical data, rather than real-time traffic information. As VA gains more experience with VCCP and receives feedback from veterans regarding their experiences with the program, we anticipate refining this tool and our systems to improve our consideration of actual conditions that affect travel to receive care and services and to provide more information to veterans regarding calculation of average drive times.

We received a comment that urged VA to publish a report every six months regarding the outcome of VA using an average drive time standard versus a mileage standard, to include a total number of individuals qualifying under the average drive time standards. We do not make changes to the regulation based on this comment, and do not commit to publishing such a report, although we note that VA will monitor use of the VCCP care and services by covered veterans, to include use that qualifies under the designated access standards. VA will report regularly to Congress on utilization of the VCCP, as required by section 1703(m).

**Claims Adjudication and Payments**

We received comments related to administrative procedures for VA's processing of claims for payments for hospital care, medical services, or extended care services furnished through the VCCP. These comments essentially stated that claims and payment procedures need to be clear and minimally burdensome and that VA must ensure it applies the prompt payment provisions that are required under section 1703D to ensure providers are paid on timely (particularly, as noted by one comment, to include provisions that cover interest on overdue claims). Some of these comments further urged VA to confirm its plans to publish future regulations to implement the prompt payment provisions in section 1703D, with some requests that VA provide a more specific timeframe in which it expects to promulgate such regulations. Another comment urged that VA should consider establishing a maximum timeframe to pay electronic claims within 14 days, and to pay paper claims within 30 days, when VA does promulgate regulations to implement section 1703D. Lastly, multiple comments generally asserted that appeals procedures for adjudication of claims or payment-related disputes should be comprehensive and timely.

We first confirm that VA will be undertaking future rulemaking to implement the prompt pay provisions of section 1703D, which will include provisions to implement the requirements under section 1703D (such as establishing timeframes in which to pay clean electronic and clean paper claims, addressing interest on overdue claims, and appeals procedures). We cannot provide an exact timeframe in which VA can expect such regulations to be promulgated, and we will not discuss specifics here of any policy development regarding such regulations, although we generally note that two-stage rulemaking can typically require 18–24 months to complete. We received some related comments regarding claims and payments processing that asserted the compensation options for eligible entities or providers are difficult to understand and that providers are not paid timely as a result, but these comments urged VA to publish a comprehensive policy for eligible entities and providers to resolve misunderstandings. We clarify that the compensation options are part of the contract between VA and the TPA. VA will work with the TPAs to ensure they have appropriate information regarding claims submission and processing that will assist in preventing untimely payments. Section 122 of the MISSION Act requires VA to develop and implement a training program for employees and contractors on how to administer non-Department health care programs. As required by section 122 of the VA MISSION Act, VA is providing training to the TPAs regarding administrative processes.

One comment indicated that on July 31, 2018, the Centers for Medicare and Medicaid Services (CMS) published the Prospective Payment System (PPS) and Consolidated Billing for Skilled Nursing Facilities (SNF) Final Rule for Fiscal Year (FY) 2019. The comment further noted that in this rule, CMS finalized a proposal to replace the current Skilled Nursing Facility Prospective Payment System Resource Utilization Group (RUGs) payment model with a new per-diem payment system called the Patient-Driven Payment Model (PDPM) beginning on October 1, 2019. This comment ultimately urged that CMS and VA communicate how the PDPM reimbursement structures and VA's reimbursement structures will work together. Because reimbursement is included in the contracts with the TPAs, VA will ensure that the payment methodology used is clearly explained to the contractors so that eligible entities and providers understand how VA's benchmark of using applicable Medicare rates may shift with the publication or annual or major Medicare rate shifts.

**Improve Procedures and Practices of VA's Third-Party Administrators**

We received many comments that identified both general and specific administrative improvements that could be made by the third-party administrators (TPA) with whom VA contracts to generally administer the VCCP. Most of these comments identified the desired administrative improvements by providing examples of TPA deficiencies as experienced under Choice, but we address these comments here in relation to the VCCP. The most general concerns expressed in these comments related to a lack of timeliness, accuracy, and follow-up regarding TPA practices in referring and scheduling care in the community. These comments generally urged that improvements were needed to streamline scheduling, where specific suggestions to achieve improvements ranged from simplifying communications systems (*e.g.,* consolidating various call center numbers to create a one-call/one-stop experience for covered veterans to interact with TPAs) to creating more comprehensive guidance on how TPAs obtain timely eligibility determinations and authorizations from VA. VA is generally responsible for scheduling appointments for veterans in most markets and will work with its TPAs to improve administrative processes to assist in streamlining scheduling in other cases, particularly where VA can improve its processes to verify eligibility and communicate authorizations of care.

Other comments indicated a need for clearer policies and processes to ensure that non-VA providers and covered veterans understand what care is and is not authorized, and a few comments deemed that VA's review of authorizations for care were not timely or consistent. One comment further urged VA to adopt a more robust and transparent process to ensure each authorization for care includes: A binding determination regarding the scope of issues that might be raised for coverage and payment purposes; a plan to transfer a covered veteran back to VA after conclusion of the treatment authorized; prompt decisions to grant or deny authorizations; and a statement that clarifies non-VA providers will receive payment for services provided due to error on VA's part or on the

covered veteran's part. Much of what is specifically raised by this comment is contemplated in the contracts VA forms with TPAs or directly with eligible entities and providers to furnish care and services through the VCCP, and VA will work to improve consistency in its authorization processes. Related comments urged VA to develop guidance to address oversight of its TPAs that would include metrics to measure effective communications between the TPAs and eligible entities or providers, and a process for such entities or providers to contact VA for dispute resolution regarding TPA performance. We similarly respond that much of what these comments raise is contemplated in the contracts VA forms with eligible entities and providers, and VA will work to ensure appropriate monitoring of TPAs as identified in the contract.

We received some comments related to VA's processes in credentialing non-VA entities or providers to find them eligible to furnish care and services through the VCCP. Specifically, these comments urged VA to reduce potential duplication of credentialing processes between VA and the TPAs with whom VA contracts to administer community care. One comment further urged VA to maintain its recognition of a current administrative process adopted by some non-VA hospitals (particularly, academic medical centers) to have the TPA delegate provider credentialing to the non-VA hospital, where such hospital agrees to meet the credentialing requirements through their own in-house process and be audited as necessary. We clarify that the credentialing process to determine whether non-VA entities or providers are eligible to participate in the VCCP will be conducted by the TPAs with whom VA contracts and not by VA, so we do not believe there is cause to be concerned about duplicative credentialing processes. For this same reason, VA cannot respond to clarify how a TPA's credentialing processes may be conducted, but VA would support any TPA processes to continue or establish credentialing that reduces delays, so long as VA's credentialing requirements are met.

Some comments urged improvements to administrative processes for particular groups of covered veterans. For instance, with regard to pregnant veterans and veterans in need of maternity care, one comment urged VA to: Establish a more streamlined process for prior authorizations for pregnant veterans (to include priority access to treatment of substance use disorder); require authorization by VA of required episodes of care no more than seven days after pregnancy is diagnosed; make Maternity Care Coordinators (MCC) a full-time position in VA facilities as needed; and ensure that pregnant veterans receiving non-VA care are put in contact with MCCs to assist navigating non-VA care. One commenter urged VA to require eligible entities and providers in the community to use VA's universal housing instability screener to ensure that homeless veterans who may elect to receive care in the community are aware of VA's homeless assistance programs. We appreciate these comments and agree it is important to maintain awareness if certain veteran populations may require particular VA assistance to navigate community care or assistance to access VA resources that do not necessarily pertain to healthcare matters. VA will ensure it maintains its focus to assist in care coordination for all veterans who elect to receive care in the community.

Lastly, we received a few comments that stated that VA should not use TPAs generally, as this creates an unnecessary layer of administrative bureaucracy. A few comments indicated more specifically that VA should not use a specific TPA with which it has previously contracted to provide care in the community, and instead should use veteran contractors. Currently, VA's utilization of TPAs to perform certain functions is important to ensuring VA optimizes its provision of care in the community. For instance, use of a TPA provides VA an accredited network of providers as well as claims processing that is standardized in the health care industry, which are two areas that VA does not have the required infrastructure or expertise to administer directly at this time. With regard to the comments that VA should not use a specific TPA and should use veteran contractors instead, we note that VA is subject to, and abides by, the comprehensive set of laws governing Federal procurement. Those laws do not permit indiscriminate awarding of contracts to groups of individuals, as we believe is suggested by the commenter.

**Information Technology and Information Sharing**

We received multiple comments that expressed concerns regarding VA's information technology (IT) infrastructure and capabilities to enable the level of information sharing required to ensure smooth administration of the VCCP. The general thrust of these comments asserted that VA's IT systems, particularly its electronic medical record system, required improvements to ensure the timely and seamless exchange of clinical information between VA and non-VA sources. More specifically, some commenters urged VA to acquire and use a single electronic system that would be accessible 24 hours a day/7 days a week by non-VA entities and providers, and that could be integrated with VA's electronic medical record to assist with confirming VCCP eligibility and otherwise to communicate all clinical and administrative information necessary to participate in VCCP (*e.g.* eligible entities and providers would submit and receive referrals or authorizations, medical records, claims forms, etc.). Other comments further urged VA, whether it would adopt new IT systems or modify its existing systems, to allow non-VA providers (specifically the large academic medical centers and faculty practice plans) to designate multiple staff members who would have access to those systems. We clarify that VA has been steadily working on improvements for sharing of medical information. VA participates in standardized health information exchanges in the health care industry, and this summer is deploying a commercial referral management system, Healthshare Referral Manager, which will be used to share authorizations with community providers and exchange medical information. VA has already deployed community viewer, which allows community providers secure, web-based access to medical information and VirtruPro, which allows secure, encrypted email exchange between the VA and community providers. VA also encourages all providers to submit claims electronically using industry standard transactions to ensure prompt payment of claims.

We received one comment that urged VA to modernize its IT systems as an attempt to move away from the administration of paper claims and eventually require the submission of electronic claims. VA will consider addressing the submission of paper claims and electronic claims in any future rulemaking to implement the prompt payment provisions of section 1703D. VA is also undertaking efforts to modernize its IT systems for claims processing. As noted above, VA encourages all providers to submit claims electronically using industry-standard transactions. VA is additionally deploying an industry-standard claims processing system this year that includes auto-adjudication and will improve timeliness of claims processing.

We received one comment that expressed concerns that VA's decision

support tool to determine whether a covered veteran was eligible to participate in VCCP (particularly with regard to eligibility based on VA's designated access standards), will not be ready for timely implementation on June 6, 2019. VA expects the tool will be ready by June 6, 2019. This tool will assist with eligibility determinations by displaying, documenting, and storing relevant information related to eligibility determinations in a standardized and reportable manner. In the event that the tool was not at full functionality for any reason, VA can also look to other systems to gather and assess information related to eligibility (such as VA's Computerized Patient Record System) as a contingency.

**Emergency Care**

We received comments related to the administrative practices of VA in reviewing and approving emergency care. These comments generally relayed concerns that covered veterans were unduly subject to cost liabilities for emergency treatment because the administrative requirements VA imposes were unclear or inefficient and lead to VA failing to approve or pay for the emergency care in a timely manner. These comments suggested multiple improvements, primarily comprised of requests for VA to: Increase education for providers and covered veterans (to ensure the nearest VA facility is well known for purposes of the 72-hour notification, who is the appropriate VA official at that facility to receive the notice, etc.); and establish a single, nationwide system (such as an online portal and national call center) where all emergency care matters under the VCCP would be administered. The administrative rules in place regarding notice to the nearest local VA facility are required to ensure that emergency care can be authorized and claims can be considered under all available authorities for emergency care. The local facility is in the best position (and in many ways, the only position) to actually assess criteria related to the appropriateness of authorizing emergency care (for instance, whether a patient could be transferred to a nearby VA facility). VA will work to improve education and messaging to non-VA providers and veterans concerning how and where to submit timely notice of use of emergency care to assist with timely approvals.

**Prescriptions**

We received comments regarding VA's administrative practices in reviewing and approving prescriptions issued by non-VA providers. These comments primarily voiced concerns that VA's practices were unnecessary or unduly burdensome and either created delays in getting prescriptions filled, or created unnecessary administrative costs for VA. Some comments further suggested alternatives to VA's current practice of VA providers reviewing and approving prescriptions from non-VA providers, such as allowing non-VA providers to fill prescriptions directly with VA pharmacies through the TPA that VA utilizes to administer its community care programs. VA's current practices of reviewing and approving prescriptions issued by non-VA providers are in place to ensure appropriate prescription monitoring, care coordination, and cost and quality controls. VA does not believe that this review creates unnecessary administrative costs for VA, but VA can work to improve its internal review and approval processes to reduce or eliminate delays in getting non-VA prescriptions filled.

**Eligible Entities and Providers**

We received comments related to VA's practices in disseminating information to non-VA providers who could potentially participate in VCCP, for the purpose of maintaining and increasing provider participation. These comments generally called for improvements in VA's communicating such information to providers and suggested improvements ranged from offering a webinar specifically on the implementation of contracts or agreements (particularly for Veterans Care Agreements authorized under section 1703A and §§ 17.4100 through 17.4135), to developing or improving policies related to approving providers to participate in the VCCP. VA will examine its current outreach and education efforts in maintaining and increasing (as needed) provider participation in the VCCP and will be open to all options of communicating with non-VA providers to ensure that provider requirements to participate in the VCCP are well understood.

We received one comment that urged VA to clarify whether non-VA providers who would furnish care and services under the VCCP are considered Federal contractors or subcontractors to be subject to Federal contractor requirements, including, but not limited to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and the McNamara-O'Hara Service Contract Act of 1965, as amended, and any other Federal contractor obligations, such as those related to Federal minimum wage and sick leave. This comment urged that non-VA providers participating in the VCCP should not be considered Federal contractors or subcontractors to avoid application of Federal contractor obligations imposed under the jurisdiction of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). We clarify that section 107 of the MISSION Act states that Directive 2014–01 of the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (effective as of May 7, 2014) applies to any entity entering into an agreement under section 1703A or section 1745 of title 38 in the same manner as such Directive applies to subcontractors under the TRICARE program for the duration of the moratorium established by that Directive. VA has consulted with the Department of Labor regarding this provision, and we understand that OFFCP intended, through a Directive 2018–02, to extend the moratorium from OFCCP's jurisdiction concerning Executive Order 11246, section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act to cover health care providers in all VA programs under which VA has statutory authority to provide care to veterans by contracting with private, non-VA providers. Specifically, we understand OFCCP to consider the following categories of providers to be within the scope of the 2018 Directive's moratorium: Independent contractors operating in VA facilities, contract community-based outpatient clinics, and providers who are part of a network and furnishing services pursuant to a contract between VA and the network administrator, contracts and agreements directly between VA and providers (*i.e.,* Federal Acquisition Regulation (FAR)-based contracts subject to all procurement laws, Choice provider agreements, Veterans Care Agreements, and agreements with State Veterans Homes). We further note that the Department of Labor is working to establish the Directive's moratorium through a regulation, and we appreciate their efforts in that effort.

**Congressional Review Act**

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 808(2) to make the rule effective on June 6, 2019. Specifically, the Secretary finds that it would be contrary to the public interest to delay the date this rule could be operative and effective because any delay in implementing the rule would have a severe detrimental impact on veterans' health care.

Section 143 of the MISSION Act of 2018 amended section 101(p) of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146; 38 U.S.C. 1701 note, as amended, hereafter referred to as the Choice Act) to state that VA may not use the Choice Act to furnish care and service after June 6, 2019. As a result, on that date, VA will no longer be able to use the Veterans Choice Program to furnish care or services in the community. Section 101 of the MISSION Act will amend 38 U.S.C. 1703 to permit VA to administer a new Veterans Community Care Program, which will replace the Veterans Choice Program. However, section 1703 will not be so amended until VA promulgates regulations under section 101(c) of the VA MISSION Act of 2018 by its own terms, which is the function of this final rule. Therefore, if this final rule is not effective on June 6, 2019, VA would not have the Choice Act authority or the MISSION Act authority under which to administer care in the community; the only authority VA would have to administer such care would section 1703 as it exists unamended by the MISSION Act.

The provisions of section 1703 as unamended by the MISSION Act, as well as its implementing regulations at 38 CFR 17.52, do not provide a sufficient legal basis to meet the requirements of section 101 of the MISSION Act in areas such as eligibility, appeals, and payment rates, nor do they provide for the same levels of community care that have been received by veterans under the Veterans Choice Program through June 6, 2019.

If this final rule to implement the new Veterans Community Care Program, and to replace Veterans Choice Program, is not effective on June 6, 2019, the approximately 2 million veterans who have received care under the Veterans Choice Program (for over 46 million appointments since inception) will be forced to find alternative pathways to care. These veterans will either be: (1) Absorbed by existing VA facilities, (2) sent out into the community under VA's more limited section 1703 authority, or (3) might forego care all together. As indicated below, all of these pathways would result in delays in care, lack of continuity in care, and absence of care that would be significantly detrimental to veteran's health.

Absorbing the Veterans Choice Program's share of care for 2 million veterans into existing VA facilities would significantly strain VA's resources and cause problems impacting veterans' health. It would interrupt continuity of care, pose significant delays for scheduling care, and would lead to long wait times. The VA system is simply not capable of accommodating this amount of care without causing delays in access to care.

Some care, therefore, would need to remain in the community. But with neither the Veterans Choice Program nor the new Veterans Community Care Program in place, VA would have no universally applicable eligibility criteria for community care. Without such national, clear, and consistent criteria in place, individual VA facilities or VA Health Care Systems may adopt local criteria that do not support standardized decisions regarding when veterans may be eligible to receive VA community care, and VA could return to the same non-standardized community care environment that led to the wait-time issues in 2014, such as when access barriers adversely affected the quality of primary and specialty care at the Phoenix VA Health Care System. After the wait-time issues of the Phoenix VA Health Care System were made public, VA's Office of Inspector General examined the electronic health records and other information from more than 3,000 veteran patients and identified 28 instances of clinically significant delays in care associated with access to care or patient scheduling. The Office of the Inspector General (OIG) found that the majority of the veteran patients reviewed were on official or unofficial wait lists and experienced delays accessing primary care—in some cases, pressing clinical issues required specialty care, which some patients were already receiving through VA or non-VA providers. OIG further found that some veterans on unofficial wait lists were at risk of never obtaining their requested or necessary appointments. As OIG stated, inappropriate scheduling practices were a nationwide systemic problem. OIG identified multiple types of scheduling practices in use that did not comply with VHA's scheduling policy. We believe these deviations from scheduling policy were due in part to limited and inconsistently applied criteria by which veterans may receive community care.

By way of example, section 1703 as unamended by the MISSION Act provides VA authority to contract for hospital care and medical services when VA facilities are not capable of furnishing economical care due to geographic inaccessibility or are not capable of furnishing care. However, our implementing regulations at 38 CFR 17.52 generally establish eligibility criteria based on type of care needed and whether or not the veteran is service-connected, and do not provide additional clarity on what geographic inaccessibility means. Nothing in § 17.52 or section 1703 as unamended by the MISSION Act approximates the specific eligibility criteria available under the Veterans Choice Program or contemplated under the MISSION Act related to distance-related access criteria. As such, the criterion of geographic inaccessibility under section 1703 as unamended by the MISSION Act can be interpreted many ways, leading to inequitable eligibility decisions for community care and bad scheduling practices based on such decisions.

A delay in the effective date of this rule would result in a lack of consistently applicable community care criteria, which would create significant disruptions for even a limited period of time such as sixty days. Continuity of care could particularly be disrupted, and patient safety and health would be in jeopardy, for any veterans who would not be authorized to seek care from a health care provider that has been treating them for years under the Veterans Choice Program. This could be particularly harmful for veterans who have mental health conditions and are only comfortable seeking treatment from their current mental health care professional.

Such veterans may opt to simply forego care from a different provider for a delay of sixty days until this rule is effective. Similarly, a sixty-day delayed effective date could increase confusion for even for new veteran users, new and existing providers in the community, as well as employees at VA, if VA were to go from administering community care under Veterans Choice Program criteria, to then under significantly more limited criteria of section 1703 as unamended by the MISSION Act for a very limited period of time, and then to implementation of what are now publicly vetted and broader criteria under the new Veterans Community Care Program. To avoid this confusion, some veterans may simply choose not to receive care until the new Veterans Community Care Program is in place, or providers may simply not participate, or even VA may be at risk for administering community care incorrectly. This places veterans' health and safety at risk, particularly for continuous and periodic care or treatment that may be occurring under the Veterans Choice Program through June 6, 2019, and that must typically occur on an immediate and stringent schedule upon diagnosis (such as treatment for cancer, or maternity care).

Accordingly, the Secretary finds it would be contrary to the public interest

to delay the effective date of AQ46 and that there is good cause to dispense with the opportunity for a 60-day period of prior Congressional review and to publish this final rule with an operative and effective date of June 6, 2019.

**Administrative Procedure Act**

For the reasons set forth in the preceding section, the Secretary finds that there is good cause under 5 U.S.C. 553(d)(3) to publish this rule with an effective date that is less than 30 days from the date of publication.

**Effect of Rulemaking**

The Code of Federal Regulations, as revised by this rulemaking, represents the exclusive legal authority on this subject. No contrary rules or procedures will be authorized. All VA guidance will be read to conform with this rulemaking if possible or, if not possible, such guidance will be superseded by this rulemaking.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(2)(vi).

This final rule will amend information collection requirements currently approved under control number 2900–0823 and will impose new collections of information requirements and burden. Notice of OMB approval for this information collection will be published in the **Federal Register**.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although some eligible entities or providers that will furnish care and services to veterans under this rule might be considered small entities, there will be no significant adverse economic impact. To the extent there is any impact on small entities and given the lapse in statutory authority for the Veterans Choice Program, it will be a potential increase in business due to proposed expanded eligibility for non-VA care. While this rulemaking defines payment rates and eligible entities and providers, it does so in a way that is consistent with VA's current authorities. We note that separate regulations at 38 CFR 17.4100 through 17.4135, authorizes VA to enter into agreements with eligible providers, many of whom will likely be small businesses. We also do not believe there will be a significant economic impact on any insurance companies that might be considered small businesses, as claims would only be submitted for care that would otherwise have been received whether such care was authorized under VCCP; the need for the care itself is not generated by the VCCP, merely furnished under the VCCP versus another program. Therefore, pursuant to 5 U.S.C. 605(b), the Secretary has determined that an initial and a final regulatory flexibility analysis are not needed.

**Executive Orders 12866, 13563 and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as any regulatory action that is likely to result in a rule that may: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is an economically significant regulatory action under Executive Order 12866. The total estimated budget impact (both transfers and costs) is projected to be $346.3 million in FY 2019 and $17.9 billion over a 5-year period. Transfers are estimated to be $15.6 billion over a 5-year period and costs are estimated to be $2.2 billion over a 5-year period. These transfer impacts are from the federal government to eligible Veterans. The cost impacts are administrative fees, claim fees and other non-provider payment costs.

Benefits of the rulemaking will strengthen the access to VA health care overall by increasing the choices Veterans have for their health care and complementing the increasingly timely, high-quality care provided by VA medical facilities. Veterans will continue to have the option to choose whether to receive care at a VA medical facility or a community provider. Furthermore, the access expansion will allow Veterans to receive care in the community through a network of providers when VA does not provide the required care or services, wait times do not conform with VA access standards, service line does not meet VA quality standards, the referring clinician determines it is in the best medical interest of the Veteran to receive care or services in the community. Additionally, Veterans will be able to access community care when the Veteran was eligible to receive care under certain grandfathering provisions or VA does not operate a full-service medical facility in the State in which the veteran resides.

VA's regulatory impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD. This final rule is an E.O. 13771 regulatory action. VA has determined that the net costs are $2.2 million over a five-year period (FY2019–FY2023) and $429 million per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more

(adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical devices, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on April 23, 2019, for publication.

Dated: May 30, 2019.

**Michael P. Shores,**

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

For the reasons set forth in the preamble, we amend 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by revising the entry for § 17.38 and adding entries for §§ 17.46, 17.52, 17.55, 17.56, 17.108, 17.110, and 17.111 and §§ 17.4000 through 17.4040 in numerical order to read in part as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.38 is also issued under 38 U.S.C. 1703.

Section 17.46 is also issued under 38 U.S.C. 1710.

Section 17.52 is also issued under 38 U.S.C. 1701, 1703, 1710, 1712, and 3104.

Section 17.55 is also issued under 38 U.S.C. 513, 1703, and 1728.

Section 17.56 is also issued under 38 U.S.C. 1703 and 1728.

Section 17.108 is also issued under 38 U.S.C. 501, 1703, 1710, 1725A, and 1730A.

Section 17.110 is also issued under 38 U.S.C. 501, 1703, 1710, 1720D, 1722A, and 1730A.

Section 17.111 is also issued under 38 U.S.C. 101(28), 501, 1701(7), 1703, 1710, 1710B, 1720B, 1720D, and 1722A.

* * * * *

Sections 17.4000 through 17.4040 also issued under 38 U.S.C. 1703, 1703B, and 1703C.

* * * * *

**§ 17.38 [Amended]**

■ 2. Amend § 17.38(a)(1)(iv) by removing ''§§ 17.52(a)(3), 17.53, 17.54, 17.120–132'' and adding in its place ''§ 17.52(a)(3), § 17.53, § 17.54, §§ 17.120 through 17.132, or §§ 17.4000 through 17.4040.''

**§ 17.46 [Amended]**

■ 3. Amend § 17.46:

■ a. In paragraph (a) introductory text by adding the phrase ''on or before June 6, 2019,'' after the phrase ''In furnishing hospital care''; and

■ b. Removing the authority citations at the ends of paragraphs (a) and (b).

■ 4. Amend § 17.52 by removing the authority citations at the ends of paragraphs (a)(1) through (10) and paragraph (b) and adding paragraph (c) to read as follows:

**§ 17.52 Hospital care and medical services in non-VA facilities.**

* * * * *

(c) The provisions of this section shall not apply to care furnished by VA after June 6, 2019.

**§ 17.54 [Removed and Reserved]**

■ 5. Remove and reserve § 17.54.

■ 6. Amend § 17.55 by revising the introductory text and removing the authority citation at the end of the section to read as follows:

**§ 17.55 Payment for authorized public or private hospital care.**

Except as otherwise provided in this section, payment for public or private hospital care furnished on or before June 6, 2019, under 38 U.S.C. 1703 and § 17.52, or at any time under 38 U.S.C. 1728 and §§ 17.120 and 17.128 or under 38 U.S.C. 1787 and § 17.410, shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Centers for Medicare & Medicaid Services (CMS) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

* * * * *

■ 7. Amend § 17.56 by adding paragraph (e) and removing the authority citation at the end of the section to read as follows:

**§ 17.56 VA payment for inpatient and outpatient health care professional services at non-departmental facilities and other medical charges associated with non-VA outpatient care.**

* * * * *

(e) Except for payments for care furnished under 38 U.S.C. 1725 and § 17.1005, under 38 U.S.C. 1728 and §§ 17.120 and 17.128, or under 38 U.S.C. 1787 and § 17.410, the provisions of this section shall not apply to care furnished by VA after June 6, 2019, or care furnished pursuant to an agreement authorized by 38 U.S.C. 1703A.

■ 8. Amend § 17.108:

■ a. In paragraph (b)(4):

■ i. By removing ''§ 17.1500 through 17.1540'' and adding in its place ''§§ 17.1500 through 17.1540, or the Veterans Community Care Program under §§ 17.4000 through 17.4040''; and

■ ii. Removing ''paragraphs (b)(2) or (b)(3)'' and adding in its place ''paragraph (b)(2) or (3)'';

■ b. In paragraph (c)(4), by removing ''§ 17.1500 through 17.1540'' and adding in its place ''§§ 17.1500 through 17.1540, or the Veterans Community Care Program under §§ 17.4000 through 17.4040''; and

■ c. Removing the authority citation at the end of the section.

**§ 17.110 [Amended]**

■ 9. Amend § 17.110:

■ a. In paragraph (b)(4):

■ i. By removing ''§ 17.1500 through 17.1540'' and adding in its place ''§§ 17.1500 through 17.1540, or the Veterans Community Care Program under §§ 17.4000 through 17.4040''; and

■ ii. Removing ''paragraphs (b)(1)(i) through (b)(1)(iii)'' and adding in its place ''paragraphs (b)(1)(i) through (iii)''; and

■ b. Removing the authority citation at the end of the section.

**§ 17.111 [Amended]**

■ 10. Amend § 17.111:
■ a. In paragraph (b)(3):
■ i. By removing ''§ 17.1500 through 17.1540'' and adding in its place ''§§ 17.1500 through 17.1540, as well as extended care services furnished through the Veterans Community Care Program under §§ 17.4000 through 17.4040''; and
■ ii. Removing ''paragraphs (b)(1) or (b)(2)'' and adding in its place ''paragraph (b)(1) or (2)''; and
■ b. Removing the authority citation at the end of the section.

**§ 17.1004 [Amended]**

■ 11. Amend § 17.1004 in paragraph (b) introductory text by removing the phrase ''HCFA 1500'' and adding in its place ''CMS 1500'' and removing the authority citation at the end of the section.
■ 12. Add an undesignated center heading and §§ 17.4000 through 17.4040 to read as follows:

**Veterans Community Care Program**

Sec.
17.4000 Purpose and scope.
17.4005 Definitions.
17.4010 Veteran eligibility.
17.4015 Designated VA medical service lines.
17.4020 Authorized non-VA care.
17.4025 Effect on other provisions.
17.4030 Eligible entities and providers.
17.4035 Payment rates.
17.4040 Designated access standards.

**Veterans Community Care Program**

**§ 17.4000 Purpose and scope.**

(a) *Purpose.* Sections 17.4000 through 17.4040 implement the Veterans Community Care Program, authorized by 38 U.S.C. 1703.

(b) *Scope.* The Veterans Community Care Program establishes when a covered veteran may elect to have VA authorize an episode of care for hospital care, medical services, or extended care services from an eligible entity or provider. Sections 17.4000 through 17.4040 do not affect eligibility for non-VA care under sections 1724, 1725, 1725A, or 1728 of title 38, United States Code.

**§ 17.4005 Definitions.**

For purposes of the Veterans Community Care Program under §§ 17.4000 through 17.4040:

*Appointment* means an authorized and scheduled encounter, including telehealth and same-day encounters, with a health care provider for the delivery of hospital care, medical services, or extended care services.

*Covered veteran* means a veteran enrolled under the system of patient enrollment in § 17.36, or a veteran who otherwise meets the criteria to receive care and services notwithstanding his or her failure to enroll in § 17.37(a) through (c).

*Eligible entity or provider* means a health care entity or provider that meets the requirements of § 17.4030.

*Episode of care* means a necessary course of treatment, including follow-up appointments and ancillary and specialty services, which lasts no longer than 1 calendar year.

*Extended care services* include the same services as described in 38 U.S.C. 1710B(a).

*Full-service VA medical facility* means a VA medical facility that provides hospital care, emergency medical services, and surgical care and having a surgical complexity designation of at least ''standard.''

Note 1 to the definition of ''full-service VA medical facility'': VA maintains a website with a list of the facilities that have been designated with at least a surgical complexity of ''standard,'' which can be accessed on VA's website.

*Hospital care* has the same meaning as defined in 38 U.S.C. 1701(5).

*Medical services* have the same meaning as defined in 38 U.S.C. 1701(6).

*Other health-care plan contract* means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement not administered by the Secretary of Veterans Affairs, under which health services for individuals are provided or the expenses of such services are paid; and does not include any such policy, contract, agreement, or similar arrangement pursuant to title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 *et seq.*) or chapter 55 of title 10, United States Code.

*Residence* means a legal residence or personal domicile, even if such residence is seasonal. A covered veteran may maintain more than one residence but may only have one residence at a time. If a covered veteran lives in more than one location during a year, the covered veteran's residence is the residence or domicile where they are staying at the time they want to receive hospital care, medical services, or extended care services through the Veterans Community Care Program. A post office box or other non-residential point of delivery does not constitute a residence.

*Schedule* means identifying and confirming a date, time, location, and entity or health care provider for an appointment in advance of such appointment.

Note 1 to the definition of ''schedule'': A VA telehealth encounter and a same-day care encounter are considered to be scheduled even if such an encounter is conducted on an ad hoc basis.

*VA facility* means a VA facility that offers hospital care, medical services, or extended care services.

*VA medical service line* means a specific medical service or set of services delivered in a VA facility.

**§ 17.4010 Veteran eligibility.**

Section 1703(d) of title 38, U.S.C., establishes the conditions under which, at the election of the veteran and subject to the availability of appropriations, VA must furnish care in the community through eligible entities and providers. VA has regulated these conditions under paragraphs (a)(1) through (5) of this section. If VA determines that a covered veteran meets at least one or more of the conditions in paragraph (a) of this section and has provided information required by paragraphs (b) and (c) of this section, the covered veteran may elect to receive authorized non-VA care under § 17.4020.

(a) The covered veteran requires hospital care, medical services, or extended care services and:

(1) No VA facility offers the hospital care, medical services, or extended care services the veteran requires.

(2) VA does not operate a full-service VA medical facility in the State in which the veteran resides.

(3) The veteran was eligible to receive care and services from an eligible entity or provider under section 101(b)(2)(B) of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146, sec. 101, as amended; 38 U.S.C. 1701 note) as of June 5, 2018, and continues to reside in a location that would qualify the veteran under that provision, and:

(i) Resides in Alaska, Montana, North Dakota, South Dakota, or Wyoming; or

(ii) Does not reside in one of the States described in paragraph (a)(3)(i) of this section, but received care or services under title 38 U.S.C. between June 6, 2017, and June 6, 2018, and is seeking care before June 6, 2020.

(4) Has contacted an authorized VA official to request the care or services the veteran requires, but VA has determined it is not able to furnish such care or services in a manner that complies with designated access standards established in § 17.4040.

(5) The veteran and the veteran's referring clinician determine it is in the best medical interest of the veteran, for the purpose of achieving improved

clinical outcomes, to access the care or services the veteran requires from an eligible entity or provider, based on one or more of the following factors, as applicable:

(i) The distance between the veteran and the facility or facilities that could provide the required care or services;

(ii) The nature of the care or services required by the veteran;

(iii) The frequency the veteran requires the care or services;

(iv) The timeliness of available appointments for the required care or services;

(v) The potential for improved continuity of care;

(vi) The quality of the care provided; or

(vii) Whether the veteran faces an unusual or excessive burden in accessing a VA facility based on consideration of the following:

(A) Excessive driving distance; geographical challenges, such as the presence of a body of water (including moving water and still water) or a geologic formation that cannot be crossed by road; or environmental factors, such as roads that are not accessible to the general public, traffic, or hazardous weather.

(B) Whether care and services are available from a VA facility that is reasonably accessible.

(C) Whether a medical condition of the veteran affects the ability to travel.

(D) Whether there is a compelling reason the veteran needs to receive care and services from a non-VA facility.

(E) The need for an attendant, which is defined as a person who provides required aid and/or physical assistance to the veteran, for a veteran to travel to a VA medical facility for hospital care or medical services.

(6) In accordance with § 17.4015, VA has determined that a VA medical service line that would furnish the care or services the veteran requires is not providing such care or services in a manner that complies with VA's standards for quality.

(b) If the covered veteran changes his or her residence, the covered veteran must update VA about the change within 60 days.

(c) A covered veteran must provide to VA information on any other health-care plan contract under which the veteran is covered prior to obtaining authorization for care and services the veteran requires. If the veteran changes such other health-care plan contract, the veteran must update VA about the change within 60 days.

(d) Review of veteran eligibility determinations. The review of any decisions under paragraph (a) of this section are subject to VA's clinical appeals process, and such decisions may not be appealed to the Board of Veterans' Appeals.

(The information collection is pending Office of Management and Budget approval.)

**§ 17.4015 Designated VA medical service lines.**

(a) VA may identify VA medical service lines that are underperforming based on the timeliness of care when compared with the same medical service line at other VA facilities and based on data related to two or more distinct and appropriate quality measures of VA's standards for quality when compared with non-VA medical service lines.

(b) VA will make determinations regarding VA medical service lines under this section using data described in paragraph (a) of this section, VA standards for quality, and based on factors identified in paragraph (e) of this section.

(c) VA will announce annually any VA medical service lines identified under paragraph (a) of this section by publishing a document in the **Federal Register**. Such document will identify and describe the standards for quality VA used to inform the determination under paragraph (a), as well as how the data described in paragraph (a) and factors identified in paragraph (e) of this section were used to make the determinations. Such document will also identify limitations, if any, concerning when and where covered veterans can receive qualifying care and services at their election in the community based on this section. Such limitations may include a defined timeframe, a defined geographic area, and a defined scope of services. VA will also take reasonable steps to provide direct notice to covered veterans affected under this section.

(d) VA will identify no more than 3 VA medical services lines in a single VA facility under this section, and no more than 36 VA medical service lines nationally under this section.

(e) In determining whether a VA medical service line should be identified under paragraph (a) of this section, and to comply with paragraph (c) of this section, VA will consider:

(1) Whether the differences between performance of individual VA medical service lines, and between performance of VA medical service lines and non-VA medical service lines, is clinically significant.

(2) Likelihood and ease of remediation of the VA medical service line within a short timeframe.

(3) Recent trends concerning the VA medical service line or non-VA medical service line.

(4) The number of covered veterans served by the medical service line or that could be affected by the designation.

(5) The potential impact on patient outcomes.

(6) The effect that designating one VA medical service line would have on other VA medical service lines.

**§ 17.4020 Authorized non-VA care.**

(a) *Electing non-VA care.* Except as provided for in paragraph (d) of this section, a covered veteran eligible for the Veterans Community Care Program under § 17.4010 may choose to schedule an appointment with a VA health care provider, or have VA authorize the veteran to receive an episode of care for hospital care, medical services, or extended care services from an eligible entity or provider when VA determines such care or services are clinically necessary.

(b) *Selecting an eligible entity or provider.* A covered veteran may specify a particular eligible entity or provider. If a covered veteran does not specify a particular eligible entity or provider, VA will refer the veteran to a specific eligible entity or provider.

(c) *Authorizing emergency treatment.* This paragraph (c) applies only to emergency treatment furnished to a covered veteran by an eligible entity or provider when such treatment was not the subject of an election by a veteran under paragraph (a) of this section. This paragraph (c) does not affect eligibility for, or create any new rules or conditions affecting, reimbursement for emergency treatment under section 1725 or 1728 of title 38, United States Code.

(1) Under the conditions set forth in this paragraph (c), VA may authorize emergency treatment after it has been furnished to a covered veteran. For purposes of this paragraph (c), ''emergency treatment'' has the meaning defined in section 1725(f)(1) of title 38, United States Code.

(2) VA may only authorize emergency treatment under this paragraph (c) if the covered veteran, someone acting on the covered veteran's behalf, or the eligible entity or provider notifies VA within 72-hours of such care or services being furnished and VA approves the furnishing of such care or services under paragraph (c)(3) of this section.

(3) VA may approve emergency treatment of a covered veteran under this paragraph (c) only if:

(i) The veteran is receiving emergency treatment from an eligible entity or provider.

(ii) The notice to VA complies with the provisions of paragraph (c)(4) of this section and is submitted within 72 hours of the beginning of such treatment.

(iii) The emergency treatment only includes services covered by VA's medical benefits package in § 17.38.

(4) Notice to VA must:

(i) Be made to the appropriate VA official at the nearest VA facility;

(ii) Identify the covered veteran; and

(iii) Identify the eligible entity or provider.

(d) *Organ and bone marrow transplant care.* (1) In the case of a covered veteran described in paragraph (d)(3) of this section, the Secretary will determine whether to authorize an organ or bone marrow transplant for the covered veteran through an eligible entity or provider.

(2) The Secretary will make determinations under paragraph (d)(1) of this section, and the primary care provider of the veteran will make determinations concerning whether there is a medically compelling reason to travel outside the region of the Organ Procurement and Transplantation Network in which the veteran resides to receive a transplant, in consideration of, but not limited to, the following factors:

(i) Specific patient factors.

(ii) Which facilities meet VA's standards for quality, including quality metrics and outcomes, for the required transplant.

(iii) The travel burden on covered veterans based upon their medical conditions and the geographic location of eligible transplant centers.

(iv) The timeliness of transplant center evaluations and management.

(3) This paragraph (d) applies to covered veterans who meet one or more conditions of eligibility under § 17.4010(a) and:

(i) Require an organ or bone marrow transplant as determined by VA based upon generally-accepted medical criteria; and

(ii) Have, in the opinion of the primary care provider of the veteran, a medically compelling reason, as determined in consideration of the factors described in paragraph (d)(2) of this section, to travel outside the region of the Organ Procurement and Transplantation Network in which the veteran resides, to receive such transplant.

**§ 17.4025 Effect on other provisions.**

(a) *General.* No provision in this section may be construed to alter or modify any other provision of law establishing specific eligibility criteria for certain hospital care, medical services, or extended care services.

(b) *Prescriptions.* Notwithstanding any other provision of this part, VA will:

(1) Pay for prescriptions no longer than 14 days written by eligible entities or providers for covered veterans, including over-the-counter drugs and medical and surgical supplies, available under the VA national formulary system to cover a course of treatment for an urgent or emergent condition.

(2) Fill prescriptions written by eligible entities or providers for covered veterans, including over-the-counter drugs and medical and surgical supplies, available under the VA national formulary system.

(3) Pay for prescriptions written by eligible entities or providers for covered veterans that have an immediate need for durable medical equipment and medical devices that are required for urgent or emergent conditions (*e.g.,* splints, crutches, manual wheelchairs).

(4) Fill prescriptions written by eligible entities or providers for covered veterans for durable medical equipment and medical devices that are not required for urgent or emergent conditions.

(c) *Copayments.* Covered veterans are liable for a VA copayment for care or services furnished under the Veterans Community Care Program, if required by § 17.108(b)(4) or (c)(4), § 17.110(b)(4), or § 17.111(b)(3).

**§ 17.4030 Eligible entities and providers.**

To be eligible to furnish care and services under the Veterans Community Care Program, entities or providers:

(a) Must enter into a contract, agreement, or other arrangement to furnish care and services under the Veterans Community Care Program under §§ 17.4000 through 17.4040.

(b) Must either:

(1) Not be a part of, or an employee of, VA; or

(2) If the provider is an employee of VA, not be acting within the scope of such employment while providing hospital care, medical services, or extended care services through the Veterans Community Care Program under §§ 17.4000 through 17.4040.

(c) Must be accessible to the covered veteran. VA will determine accessibility by considering the following factors:

(1) The length of time the covered veteran would have to wait to receive hospital care, medical services, or extended care services from the entity or provider;

(2) The qualifications of the entity or provider to furnish the hospital care, medical services, or extended care services from the entity or provider; and

(3) The distance between the covered veteran's residence and the entity or provider.

**§ 17.4035 Payment rates.**

The rates paid by VA for hospital care, medical services, or extended care services (hereafter referred to as ''services'') furnished pursuant to a procurement contract or an agreement authorized by §§ 17.4100 through 17.4135 will be the rates set forth in the terms of such contract or agreement. Such payment rates will comply with the following parameters:

(a) Except as otherwise provided in this section, payment rates will not exceed the applicable Medicare fee schedule (including but not limited to allowable rates under 42 U.S.C. 1395m) or prospective payment system amount (hereafter ''Medicare rate''), if any, for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities).

(b) With respect to services furnished in a State with an All-Payer Model Agreement under section 1814(b)(3) of the Social Security Act (42 U.S.C. 1395f(b)(3)) that became effective on or after January 1, 2014, the Medicare payment rates under paragraph (a) of this section will be calculated based on the payment rates under such agreement.

(c) Payment rates for services furnished in a highly rural area may exceed the limitations set forth in paragraphs (a) and (b) of this section. The term ''highly rural area'' means an area located in a county that has fewer than seven individuals residing in that county per square mile.

(d) Payment rates may deviate from the parameters set forth in paragraphs (a) through (c) of this section when VA determines, based on patient needs, market analyses, health care provider qualifications, or other factors, that it is not practicable to limit payment for services to the rates available under paragraphs (a) through (c).

(e) Payment rates for services furnished in Alaska are not subject to paragraphs (a) through (d) of this section and will be set forth in the terms of the procurement contract or agreement authorized by §§ 17.4100 through 17.4135, pursuant to which such services are furnished. If no payment rate is set forth in the terms of such a contract or agreement pursuant to which such services are furnished, payment rates for services furnished in Alaska will follow the Alaska Fee Schedule of the Department of Veterans Affairs.

**§ 17.4040 Designated access standards.**

(a) The following access standards have been designated to apply for purposes of eligibility determinations to access care in the community through the Veterans Community Care Program under § 17.4010(a)(4).

(1) *Primary care, mental health care, and non-institutional extended care services.* VA cannot schedule an appointment for the covered veteran with a VA health care provider for the required care or service:

(i) Within 30 minutes average driving time of the veteran's residence; and

(ii) Within 20 days of the date of request unless a later date has been agreed to by the veteran in consultation with the VA health care provider.

(2) *Specialty care.* VA cannot schedule an appointment for the covered veteran with a VA health care provider for the required care or service:

(i) Within 60 minutes average driving time of the veteran's residence; and

(ii) Within 28 days of the date of request unless a later date has been agreed to by the veteran in consultation with the VA health care provider.

(b) For purposes of calculating average driving time from the veteran's residence in paragraph (a) of this section, VA will use geographic information system software.

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Part V

## The President


Proclamation 9897—African-American Music Appreciation Month, 2019
Proclamation 9898—Great Outdoors Month, 2019
Proclamation 9899—National Caribbean-American Heritage Month, 2019
Proclamation 9900—National Homeownership Month, 2019
Proclamation 9901—National Ocean Month, 2019
Proclamation 9902—To Modify the List of Beneficiary Developing Countries Under the Trade Act of 1974

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Vol. 84, No. 108
Wednesday, June 5, 2019

# Presidential Documents

**Title 3—**

## The President

**Proclamation 9897 of May 31, 2019**

## African-American Music Appreciation Month, 2019

**By the President of the United States of America**

**A Proclamation**

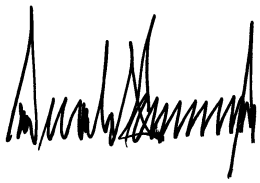
Throughout American history, African-American music has reflected our Nation's challenges and triumphs and has always enriched our Nation's culture. During African-American Music Appreciation Month, we pay tribute to the talented and inspiring African-American artists who have given sound and voice to the full range of human emotions through the blues, jazz, gospel, rock and roll, rap, hip hop, and other genres.

Last year, we lost one of our Nation's most beloved African-American musicians, songwriters, and singers, Aretha Franklin, the ''Queen of Soul.'' She was an 18-time Grammy Award winner and the first female artist inducted into the Rock and Roll Hall of Fame. During her extraordinary career, Franklin infused her talent and unmistakable style into gospel, rhythm and blues, rock and roll, jazz, and even opera. Her songs are treasures of the American music canon. A recipient of the Presidential Medal of Freedom and the National Medal of Arts, Franklin's imprint on America's soundscape is timeless. She will forever reign as a luminary of African-American music.

This month, we celebrate the countless contributions of African-American singers, composers, and musicians, who have influenced and shaped every genre and style of music. They have turned universally shared emotions and experiences of suffering, joy, passion, pain, faith, injustice, and love into art that speaks to the heart and spirit of any American. African-American music has the power to encourage, inspire, and affect social change. It transcends time, compelling generation after generation to sing, dance, think, and feel, and it endures in our culture, our history, our spirit, and our collective national soul.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2019 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and appreciation of African-American music.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–11976
Filed 6–4–19; 11:15 am]
Billing code 3295–F9–P

# Presidential Documents

**Proclamation 9898 of May 31, 2019**

## Great Outdoors Month, 2019

**By the President of the United States of America**

**A Proclamation**

Each year, millions of Americans step into our Nation's vast and wondrous outdoors. There, they experience the miracles of creation: expansive forests, towering mountains, winding canyons, pristine waters, imposing glaciers, and soaring landscapes. These natural marvels offer limitless opportunity to experience nature and to consider the profound. During Great Outdoors Month, we celebrate the majesty of our planet and the freedom we have to witness its awe-inspiring grandeur.

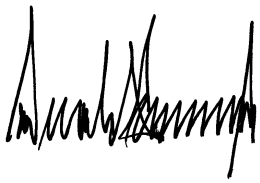
In America, adventurers of all stripes have a place to experience, to explore, and to make lifelong memories. The National Parks System alone encompasses more than 400 different natural, cultural, and historic sites throughout the country. Thousands more State parks and trails ornament our country's varied landscapes. Even our cityscapes are filled with parks, marinas, swimming pools, golf courses, tennis courts, and other recreational opportunities. No matter the location, citizens in every part of our Nation can find their own outdoor adventure and, in doing so, improve their health, deepen connections with their families and communities, and experience their country in new and exciting ways.

A proud tradition of protecting and maintaining our outdoor places is woven into our Nation's heritage. Expanding access to these many locations is a priority of my Administration. We have opened hundreds of thousands of acres of previously unavailable or restricted public lands and added hundreds of miles to the national recreation trails system. I also recently signed into law the John D. Dingell, Jr. Conservation, Management, and Recreation Act, which designates new acreage as wilderness areas, increases access to public lands for hunting and fishing, and expands areas for recreational camping and boating. We will continue to leverage public- and private-sector resources to preserve our cultural history and natural habitat for future generations.

This month in particular, we recognize all those who help to conserve our natural environment, and we renew our commitment to act as responsible stewards of its many gifts. I encourage all Americans to get outdoors this summer to encounter, appreciate, and enjoy the natural splendor of our beautiful country.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2019 as Great Outdoors Month. I urge all Americans to explore the great outdoors while acting as stewards of our lands and waters.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States the two hundred and forty-third.



[FR Doc. 2019–11977
Filed 6–4–19; 11:15 am]
Billing code 3295–F9–P

# Presidential Documents

**Proclamation 9899 of May 31, 2019**

## National Caribbean-American Heritage Month, 2019

**By the President of the United States of America**

**A Proclamation**

During National Caribbean-American Heritage Month, we acknowledge the significant ways Caribbean Americans have shaped our culture and heritage. Americans with roots in the Caribbean have greatly enriched our society, contributing to the arts, business, journalism, technology, government, religion, the military, sports, and many other fields.

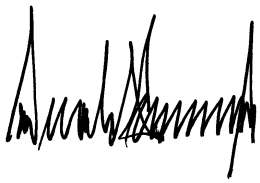
Through his dedication to his faith, Joseph Sandiford Atwell exemplified the unyielding spirit of Caribbean Americans. Born in Barbados in 1831, Atwell moved to the United States in 1863 and attended the Philadelphia Divinity School. Following the Civil War, he went to spread God's message of hope and love to the emancipated slaves in the South. Due to the strength of his ministry, he became the first black Episcopal deacon ordained in the Diocese of Kentucky and went on to become the first black Episcopal priest in the Diocese of Virginia.

Earlier this year, I met with the leaders of the Commonwealth of The Bahamas, the Dominican Republic, the Republic of Haiti, Jamaica, and Saint Lucia to reaffirm our partnership with the Caribbean. We discussed how we can bring greater prosperity to this important region, including potential opportunities for energy investment and enhanced trade partnerships. We made tremendous progress, and we will build on these discussions to strengthen further the relationship we share with our Caribbean neighbors.

This month, we recognize the vibrant culture and patriotism of Caribbean Americans that continue to bolster our country and enrich our lives, and we pay tribute to the strong friendship between the United States and the countries of the Caribbean.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2019 as National Caribbean-American Heritage Month. I encourage all Americans to join in celebrating the history, culture, and achievements of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–11980
Filed 6–4–19; 11:15 am]
Billing code 3295–F9–P

# Presidential Documents

**Proclamation 9900 of May 31, 2019**

## National Homeownership Month, 2019

**By the President of the United States of America**

**A Proclamation**

During National Homeownership Month, we acknowledge the benefits of sustainable homeownership. Homeownership continues to be an important option for many Americans to invest in their communities, build wealth, and achieve the American Dream.

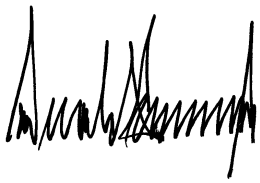
My Administration's economic policies have helped spur a booming economy, in which nearly 6 million new jobs have been created and wages are rising at the fastest rate in a decade. We have slashed more than 30,000 pages of job-killing regulations from the rule book that had been constraining economic growth, and my Tax Cuts and Jobs Act has put more money into the pockets of American workers. These successes have led to more opportunities for Americans to become homeowners, and we are committed to building on them by continuing to work with State and local governments to remove burdensome and unnecessary regulations that restrict development and artificially raise housing costs.

To offer the opportunity for more sustainable homeownership to a greater number of Americans, we must also reform our Nation's housing finance system. Earlier this year, I signed a Presidential Memorandum instructing the Secretaries of the Treasury and Housing and Urban Development to construct a plan on reforming the housing finance system to promote competition in the housing finance market that will also preserve the 30-year, fixed-rate mortgage for qualified homebuyers. These reforms are critical to improving access to sustainable mortgages and to maintaining responsible support for homeownership and for building wealth.

This month, we reaffirm our commitment to empowering more Americans with the opportunity to take the important step of becoming homeowners. By keeping taxes low, continuing to remove burdensome and unnecessary regulations, and making much-needed reforms to the housing finance system, we will open doors to sustainable homeownership to more Americans and their families.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2019 as National Homeownership Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–11984
Filed 6–4–19; 11:15 am]
Billing code 3295–F9–P

# Presidential Documents

**Proclamation 9901 of May 31, 2019**

## National Ocean Month, 2019

**By the President of the United States of America**

**A Proclamation**

The ocean supports millions of American jobs across numerous industries, including commercial fishing, recreation and tourism, international trade, shipping, ports, energy, and other maritime commerce. During National Ocean Month, we recognize the importance of the ocean to the economy, national security, and environment of the United States, and we renew our commitment to safeguarding its vital resources.

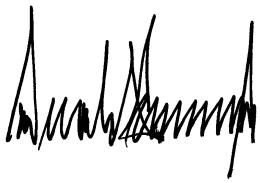
America is, and will always be, one of the world's preeminent seafaring nations. All of our Nation's citizens benefit from our access to the ocean. With more than 13,000 miles of coastline and 3.4 million nautical square miles of ocean within our territorial jurisdiction, our country's exclusive economic zone is the largest in the world. Together, our oceans and the Great Lakes generate $320 billion in economic activity. That is one reason why my Administration is committed to developing new, innovative ways to protect our native aquatic species, reduce our reliance on foreign fish imports, and keep our fishery industry strong.

Over the last few years, we have made important strides in learning more about our ocean and our Nation's coastal waters, supporting our ocean economy, and promoting good stewardship of our waters for current and future generations. Last year, I signed an Executive Order to advance ocean-related scientific research and to promote greater engagement of Federal agencies with State-led regional ocean partnerships. Importantly, our Federal agencies are continuing efforts to make ocean-related information publicly available, which will help support commerce, energy development, and conservation efforts.

Additionally, my Administration is determined to conserve, manage, and balance America's use of the ocean through enhanced mapping and exploration. With an emphasis on engaging with the private sector, we are leveraging resources and expertise to advance our understanding of the ocean and to support the ocean-related scientific and technological enterprise. Through American innovation and investment in ocean science and technology, we will reinforce our economic competitiveness, strengthen our national security, protect our environment, and preserve our continued prosperity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2019 as National Ocean Month. This month, I call upon Americans to reflect on the value and importance of oceans not only to our security, environment, and economy but also as a source of recreation, enjoyment, and relaxation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America two hundred forty-third.



[FR Doc. 2019–11985
Filed 6–4–19; 11:15 am]
Billing code 3295–F9–P

# Presidential Documents

**Proclamation 9902 of May 31, 2019**

## To Modify the List of Beneficiary Developing Countries Under the Trade Act of 1974

**By the President of the United States of America**

**A Proclamation**

1. In Executive Order 11888 of November 24, 1975, the President designated India as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP) (19 U.S.C. 2461 *et seq.*).

2. Pursuant to section 502(d)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2462(d)(1)), the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under the GSP with respect to any beneficiary developing country. In taking any action under section 502(d)(1) of the 1974 Act, the President shall consider the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

3. Section 502(c)(4) of the 1974 Act (19 U.S.C. 2462(c)(4)) provides that, in determining whether to designate any country as a beneficiary developing country, the President shall take into account, among other factors, the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices.

4. Consistent with section 502(d)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c), I have determined that India has not assured the United States that India will provide equitable and reasonable access to its markets. Accordingly, it is appropriate to terminate India's designation as a beneficiary developing country effective June 5, 2019.

5. Section 502(f)(2) of the 1974 Act (19 U.S.C. 2462(f)(2)) requires the President to notify the Congress and the affected beneficiary developing country, at least 60 days before termination, of the President's intention to terminate the affected country's designation as a beneficiary developing country, together with the considerations entering into such decision. I notified the Congress and India on March 4, 2019, of my intent to terminate India's designation, together with the considerations entering into my decision.

6. Pursuant to section 203 of the 1974 Act (19 U.S.C. 2253), and after receiving a report from the International Trade Commission prepared under section 202 of the 1974 Act (19 U.S.C. 2252), the President may implement a measure in the form of a safeguard to address increased imports of articles that are a substantial cause of serious injury to a domestic industry producing like or directly competitive products. When acting pursuant to section 203 of the 1974 Act, the President shall take action that he determines will facilitate efforts of the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

7. In Proclamation 9693 of January 23, 2018, pursuant to section 203 of the 1974 Act, I implemented a safeguard measure on imports of certain crystalline silicon photovoltaic (CSPV) cells, whether or not partially or

fully assembled into other products (including, but not limited to, modules, laminates, panels, and building-integrated materials) (''CSPV products''). In Proclamation 9694 of January 23, 2018, pursuant to section 203 of the 1974 Act, I implemented a safeguard measure on imports of large residential washers.

8. The safeguard measures implemented by Proclamations 9693 and 9694 exempt imports of covered products from developing countries that are Members of the World Trade Organization (WTO), including India, if such a country's individual share of total imports of the product does not exceed 3 percent and if imports of all such countries with less than 3 percent import share do not collectively account for more than 9 percent of total imports of the product.

9. Consistent with my determination that it is appropriate to terminate the designation of India as a beneficiary developing country under the GSP, effective June 5, 2019, I have determined to remove it from the list of developing country WTO Members exempt from application of the safeguard measures on CSPV products and large residential washers. To reflect India's removal from the list, I have determined that it is appropriate to revise subdivision (b)(2) of U.S. note 17 and subdivision (b) of U.S. note 18 to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) to delete the references to India.

10. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of the 1974 Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

11. In Proclamation 9887 of May 16, 2019, I terminated the designation of Turkey as a beneficiary developing country for purposes of the GSP and removed the exemption for Turkey from application of the safeguard measures on CSPV products and large residential washers. To reflect this termination and removal, I made certain modifications to the HTS, effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 17, 2019.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including title V and sections 203 and 604 of the 1974 Act, do hereby proclaim that:

(1) The designation of India as a beneficiary developing country is terminated, effective June 5, 2019.

(2) To reflect this termination, general notes 4(a) and 4(d) and pertinent subheadings of the HTS are modified as set forth in Annex A to this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

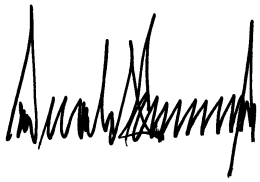
(4) The exemption for India from application of the safeguard measures on CSPV products and large residential washers is removed, effective June 5, 2019.

(5) To reflect this revision, subdivision (b)(2) of U.S. note 17 and subdivision (b) of U.S. note 18 to subchapter III of chapter 99 of the HTS are each modified as set forth in Annex B to this proclamation.

(6) Any merchandise from India or Turkey subject to the safeguard measures implemented by Proclamation 9693 and Proclamation 9694 that is admitted into a United States foreign trade zone on or after 12:01 a.m. eastern daylight time on June 5, 2019, must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41, and will be subject upon

entry for consumption to the safeguard measures implemented by Proclamation 9693 and Proclamation 9694.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



Billing code 3295–F9–P

## Annex A

### To Modify the Harmonized Tariff Schedule of the United States to remove India from the Generalized System of Preferences

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 5, 2019, the HTS is modified for the following subheadings:

1. General note 4(a) to the HTS is modified:

A. By deleting from the list of independent countries the name "India";

B. By deleting from the list of member countries of the South Asian Association for Regional Cooperation the name "India".

2. General note 4(d) to the HTS is modified:

A. By striking the following subheadings and the country set out opposite them:

| | | |
|---|---|---|
| 0405.20.80 India | 2834.10.10 India | 2921.42.23 India |
| 0710.29.15 India | 2841.61.00 India | 2922.29.26 India |
| 0711.40.00 India | 2841.70.50 India | 2924.29.36 India |
| 0713.40.20 India | 2844.30.10 India | 2924.29.43 India |
| 0713.60.60 India | 2903.83.00 India | 2926.90.30 India |
| 0713.60.80 India | 2904.10.08 India | 2930.80.00 India |
| 0713.90.81 India | 2904.99.04 India | 2930.90.30 India |
| 0802.80.10 India | 2907.15.10 India | 2930.90.43 India |
| 0904.22.76 India | 2907.29.25 India | 2931.32.00 India |
| 1103.19.14 India | 2908.19.20 India | 2931.34.00 India |
| 1301.90.40 India | 2913.00.50 India | 2932.99.08 India |
| 1703.90.30 India | 2914.31.00 India | 2933.19.35 India |
| 2001.90.45 India | 2915.50.20 India | 2933.59.59 India |
| 2516.20.20 India | 2916.39.15 India | 2933.99.06 India |
| 2827.39.25 India | 2918.13.50 India | 2933.99.22 India |
| 2827.39.45 India | 2918.99.30 India | 2933.99.85 India |
| 2828.10.00 India | 2920.23.00 India | 2935.90.20 India |
| 2831.90.00 India | 2921.42.21 India | 3204.12.20 India |

| | | |
|---|---|---|
| 3204.12.30 India | 4107.91.40 India | 7113.19.25 India |
| 3204.12.45 India | 5209.31.30 India | 7113.20.25 India |
| 3204.12.50 India | 5209.41.30 India | 7307.21.10 India |
| 3204.20.10 India | 5702.50.20 India | 7325.91.00 India |
| 3204.20.80 India | 5702.91.30 India | 7907.00.20 India |
| 3301.24.00 India | 5702.92.10 India | 8502.31.00 India |
| 3920.59.10 India | 5702.99.05 India | 8528.72.80 India |
| 3920.94.00 India | 5702.99.20 India | 8708.50.79 India |
| 4104.11.30 India | 5703.10.20 India | 8708.50.95 India |
| 4107.12.40 India | 5703.90.00 India | 9205.90.14 India |
| 4107.19.40 India | 7113.19.21 India | 9405.50.30 India |

B. By deleting the country "India" set out opposite the following HTS subheadings:

| | | |
|---|---|---|
| 2401.20.57 | 3907.69.00 | 7113.19.29 |
| 2906.11.00 | 3920.62.00 | 7113.19.50 |
| 3301.90.10 | 6802.93.00 | 8708.30.50 |
| 3907.61.00 | 7113.11.50 | |

3. The following HTS subheadings are modified by deleting from the rates of duty 1 – special subcolumn, the symbol "A*" and by inserting in lieu thereof "A":

| | | |
|---|---|---|
| 0405.20.80 | 1703.90.30 | 2903.83.00 |
| 0710.29.15 | 2001.90.45 | 2904.10.08 |
| 0711.40.00 | 2516.20.20 | 2904.99.04 |
| 0713.40.20 | 2827.39.25 | 2907.15.10 |
| 0713.60.60 | 2827.39.45 | 2907.29.25 |
| 0713.60.80 | 2828.10.00 | 2908.19.20 |
| 0713.90.81 | 2831.90.00 | 2913.00.50 |
| 0802.80.10 | 2834.10.10 | 2914.31.00 |
| 0904.22.76 | 2841.61.00 | 2915.50.20 |
| 1103.19.14 | 2841.70.50 | 2916.39.15 |
| 1301.90.40 | 2844.30.10 | 2918.13.50 |

| | |
|---|---|
| 2918.99.30 | 3920.94.00 |
| 2920.23.00 | 4104.11.30 |
| 2921.42.21 | 4107.12.40 |
| 2921.42.23 | 4107.19.40 |
| 2922.29.26 | 4107.91.40 |
| 2924.29.36 | 5209.31.30 |
| 2924.29.43 | 5209.41.30 |
| 2926.90.30 | 5702.50.20 |
| 2930.80.00 | 5702.91.30 |
| 2930.90.30 | 5702.92.10 |
| 2930.90.43 | 5702.99.05 |
| 2931.32.00 | 5702.99.20 |
| 2931.34.00 | 5703.10.20 |
| 2932.99.08 | 5703.90.00 |
| 2933.19.35 | 7113.19.21 |
| 2933.59.59 | 7113.19.25 |
| 2933.99.06 | 7113.20.25 |
| 2933.99.22 | 7307.21.10 |
| 2933.99.85 | 7325.91.00 |
| 2935.90.20 | 7907.00.20 |
| 3204.12.20 | 8502.31.00 |
| 3204.12.30 | 8528.72.80 |
| 3204.12.45 | 8708.50.79 |
| 3204.12.50 | 8708.50.95 |
| 3204.20.10 | 9205.90.14 |
| 3204.20.80 | 9405.50.30 |
| 3301.24.00 | |
| 3920.59.10 | |

## Annex B

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 5, 2019, the HTS is modified as follows:

Subdivision (b)(2) of U.S. note 17 and subdivision (b) of U.S. note 18 to subchapter III of chapter 99 of the HTS are each modified by deleting from the list of developing countries the name "India".



[FR Doc. 2019–11986

Filed 6–4–19; 11:15 a.m.]

Billing code 7020–02–C

# Reader Aids

**Federal Register**

Vol. 84, No. 108

Wednesday, June 5, 2019

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## CFR PARTS AFFECTED DURING JUNE

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:**
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